Louisiana. Because the percentage differences between BellSouth's Louisiana non-loop rates and BellSouth's non-loop rates in Alabama, Mississippi, and South Carolina do not exceed the percentage differences between BellSouth's non-loop costs in Louisiana and BellSouth's costs in the three other states, we conclude that BellSouth's recurring non-loop rates in Alabama, Mississippi, and South Carolina satisfy our benchmark analysis.[320] This analysis demonstrates that, despite concerns raised by AT&T related to BellSouth's feature cost methodology in these three states, BellSouth's non-loop rates, including the costs for features reflected in the port charge, fall within a range of rates that a reasonable application of TELRIC principles would produce.[321]

(iii) Age of Rates

100. AT&T contends that BellSouth's UNE rates for loops and switching in North Carolina are not TELRIC-compliant because they are based on outdated cost data that do not take into account reduced costs from current technologies and growth in demand.[322] We disagree. As background for our analysis, we have consistently recognized that rates may well evolve over time to reflect, among other things, new information and technology.[323] The U.S. Court of Appeals for the D.C. Circuit agreed that section 271 applications might never be approved if rates had to be updated constantly to reflect new information.[324]

101. AT&T argues here that BellSouth's "out-of-date cost studies that underlie its UNE rates" do not reflect efficiencies and cost reductions in loops and switching equipment.[325] We considered this argument in the *Verizon Vermont Order*, where we noted "[m]uch of the

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[320] Although we do not rely on a benchmark comparison of Kentucky and North Carolina non-loop rates, we note that such comparison reveals that Kentucky non-loop rates pass a benchmark comparison to Louisiana non-loop rates (Kentucky's non-loop costs are 14% higher; its non-loop rates are 40% lower), and North Carolina non-loop rates come within 1% of satisfying the benchmark (North Carolina's non-loop costs are 10% lower than Louisiana's; its non-loop rates are 9.6% lower).

[321] *Sprint v. FCC*, 274 F.3d at 561 (upholding the use of our benchmark analysis).

[322] AT&T Comments at 39; AT&T Comments App., Tab D, Declaration of Michael Lieberman (AT&T Lieberman Decl.) at para. 6 ("Because provision of local telecommunications services reflects economies of scale, scope and density, the substantial growth in demand that has occurred since 1996 should yield reductions in loop and switch UNE costs.").

[323] *Verizon Vermont Order*, 17 FCC Rcd at 7637, para. 23; *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066, para. 96. Indeed, the Supreme Court has recognized the regulatory lag that accompanies price adjustments as one of the "pragmatic features of the TELRIC plan." *Verizon v. FCC*, 122 S. Ct. at 1679.

[324] *AT&T v. FCC*, 220 F.3d at 617 ("[W]e suspect that rates may often need adjustment to reflect newly discovered information . . . . If new information automatically required rejection of section 271 applications, we cannot imagine how such applications could ever be approved in this context of rapid regulatory and technological change.").

[325] AT&T Comments at 40.

underpinning of complaints by AT&T and WorldCom regarding Verizon's switching rates is that the data underlying the inputs into Verizon's switching cost studies is old."[326] We noted there that neither AT&T nor WorldCom had asked the Vermont Commission to require Verizon to update the data and inputs for its switching cost studies when this newer information had, in fact, resulted in lower rates in more recent proceedings.[327] In this case, parties complained before the North Carolina Commission that UNE rates were several years old, and the state commission ordered a new proceeding to allow rates "to better reflect current conditions."[328] Hearings are scheduled to begin in November 2002.

102. We recognize, as AT&T asserts here, that there may be factors that cause BellSouth's costs to decline over time.[329] At the same time, there may be other factors that cause costs to increase over time. Indeed, the D.C. Circuit has recognized that modifying one factor in a cost model may well cause modification to other factors.[330] This is precisely why state commissions hold hearings to update rates based on consideration of all new information and relevant data brought before them. North Carolina is in the process of revisiting UNE rates. The North Carolina Commission has demonstrated its commitment to set UNE prices based on TELRIC principles.[331] It also recognizes that its work "is far from complete."[332] AT&T may appropriately raise its arguments regarding more recent data and cost studies in these current proceedings. As we concluded previously, however, the mere pendency of a state proceeding where rates are reviewed in light of new information does not require the rejection of a section 271 application.[333]

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[326] *Verizon Vermont Order*, 17 FCC Rcd at 7636, para. 21.

[327] *Id.* at 7637, para. 22.

[328] *Application of BellSouth Telecommuncations, Inc. to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996,Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, North Carolina Commission Docket Nos. P-55, Sub 1022; P-100, Sub 133d, Order Ruling on WorldCom Petition at 7 (March 20, 2002). The Public Staff noted that BellSouth was willing to re-file cost support data based on updated models and inputs if ordered to do so. *Id.* at 5. Pursuant to the North Carolina Commission's order, AT&T, BellSouth, and WorldCom on April 15, 2002, filed a joint motion to establish a hearing schedule for the new UNE proceeding. *Proceeding to Determine Permanent Pricing for Unbundled Network Elements*, North Carolina Commission Docket No. P-100, Sub 133d, Order Establishing Schedule for New UNE Proceeding (April 19, 2002).

[329] AT&T Lieberman Decl. at paras. 6-9.

[330] *AT&T v. FCC*, 220 F.3d at 617.

[331] *See* section IV.B.1.a, *supra*.

[332] *See generally* North Carolina Commission Comments.

[333] *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9066-67, para. 97; *Verizon Rhode Island Order*, 17 FCC Rcd at 3317, para. 31 (citing *Bell Atlantic New York Order*, 15 FCC Rcd at 4085-86, para. 247, *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d at 617).

(iv) Deaveraging

103. WorldCom contends that UNE rates in South Carolina are not properly deaveraged and therefore violate the Commission's rules and TELRIC principles.[334] South Carolina allegedly deaveraged UNE rates according to retail rate zones, not geographic cost differences. That is, end users in South Carolina are grouped based on similarities in what they pay in local retail rates, rather than what it costs to provide service to them.[335] Geographic cost differences between wire centers, according to WorldCom, do not determine the zone in which wire centers are placed.[336] As a result, some very high cost wire centers are included in zone one, and some very low cost wire centers are included in zones two and three.[337] The effect of this error, according to WorldCom, is that the gross margin in zone one, which should be the most profitable, is only $2.76.[338] We reject WorldCom's claims and find that UNE deaveraging in South Carolina complies with the *Local Competition Order* and the Commission's TELRIC rules.

104. The Commission's regulations provide that "[s]tate commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences."[339] The regulations also provide that, "[t]o establish geographically deaveraged rates, state commissions may use existing density-related zone pricing plans . . . *or other such cost-related zone plans established pursuant to state law*."[340] In the *Local Competition Order*, the Commission concluded that "the pricing standard for interconnection and unbundled elements prohibits deaveraging that is not cost based."[341] The requirement is important because, as we noted in the *CALLS SLC Cap Order*, cost-based deaveraging "promotes competition and efficiency by allowing a LEC to compete for subscribers when it is the lowest cost service provider and by removing support flows to the LEC's higher-cost customers."[342] By contrast, non-cost-based deaveraging "may distort the operation of the

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334 WorldCom Comments at 13.

335 *Id.*

336 *Id.*

337 *Id.*

338 *Id.*; *see also* WorldCom Frentrup Decl. at paras. 30-31.

339 47 C.F.R. § 51.507(f).

340 47 C.F.R. § 51.507(f)(1) (emphasis added).

341 *Local Competition Order*, 11 FCC Rcd at 15883, para. 766.

342 *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, 17 FCC Rcd 10868, 10876-77, para. 18 (rel. June 5, 2002) (*CALLS SLC Cap Order*), *pet. for review filed*, No. 02-1261 (D.C. Cir. Aug. 16, 2002).

markets in high-cost areas because LECs must offer services in those areas at prices substantially lower than their costs of providing service."[343]

105. In its *UNE Rate Order*, the South Carolina Commission stated that "BellSouth proposed deaveraging loop-related UNEs into three geographic areas utilizing existing BellSouth rate groups based upon BellSouth's General Subscriber Service Tariff."[344] BellSouth calculated average monthly costs within each zone by weighting the wire-center level costs produced by the BSTLM by wire center line counts.[345] Under BellSouth's approach, according to the South Carolina Commission, customers who are located in the same geographic area and who have similar local calling areas would be in the same deaveraged zone for UNE pricing.[346] Using existing rate groups as the basis for establishing the three cost-related rate zones is said to result in consistent prices for customers within the same geographic markets.[347] The South Carolina Commission noted, however, that unlike the prices for UNEs, "BellSouth's rates for basic service were established in an inverse relationship to cost in order to ensure affordable local service for all urban and rural customers."[348] As a result, the South Carolina Commission concluded, UNE deaveraging will result in rates that vary in the opposite direction of prices for BellSouth's retail services.[349]

106. On the record before us, we conclude that the South Carolina Commission deaveraged UNE prices according to a valid "cost-related zone plan established pursuant to state law."[350] The only evidence WorldCom submits to the contrary is the general allegation that "some very high cost wire centers are included in zone 1, and some very low cost wire centers are included in zones 2 and 3."[351] This allegation, even if true, is not persuasive: the mere inclusion of a few wire centers in zones with different overall cost characteristics does not show that the overall zone plan is not cost-based. Notably, WorldCom does not refute BellSouth's evidence that, because BellSouth originally established retail rate zones in South Carolina according to underlying wire center costs, there is a direct correlation between South Carolina

[343] *Id.*

[344] *South Carolina Commission UNE Rate Order* at 7.

[345] *Id.*

[346] *Id.*

[347] *Id.* According to the South Carolina Commission, defining the three geographic zones by rate groups also provides consistency between the structure of BellSouth's retail services, resale, and UNE prices. *Id.* "The need for such consistency should be obvious, because CLECs use UNEs to compete with services offered at retail by BellSouth." *Id.*

[348] *Id.*

[349] *Id.*

[350] 47 C.F.R. § 51.507(f)(1).

[351] WorldCom Comments at 13.

retail rate zones and wire center costs.[352] BellSouth's evidence, we conclude, demonstrates that the South Carolina Commission deaveraged UNE rates according to a cost-related zone plan.

107. In addition, there is evidence in the record that adopting a UNE deaveraging methodology in South Carolina based strictly on wire center costs would have little if any effect on the resulting UNE rates. We note that the Alabama and North Carolina Commissions directed BellSouth to deaverage UNE rates strictly according to a wire center costs.[353] BellSouth persuasively demonstrates that applying the North Carolina UNE deaveraging methodology to South Carolina wire center costs results in UNE rates that are reasonably comparable to South Carolina's existing UNE rates.[354] According to BellSouth's analysis, if North Carolina's strict wire center cost deaveraging method were used in South Carolina, UNE loop rates in South Carolina would increase in zones two and three by $1.74 and $5.49, respectively, and drop in zone one by only $0.18.[355] As a result, we find that there is a direct relationship between the costs of wire centers in South Carolina and the deaveraging methodology approved by the South Carolina Commission, which is based on retail rate zones. For these reasons, we conclude that South Carolina's UNE deaveraging methodology is a valid state "cost-related zone plan" as required by 47 C.F.R. § 51.507(f)(1).

(v) Daily Usage File Rates

108. *Background.* Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete, accurate, and timely reports on the service

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[352] BellSouth Application Reply App., Tab F, Reply Affidavit of John A. Ruscilli and Cynthia K. Cox (BellSouth Ruscilli/Cox Reply Aff.) at para. 28 (stating that "the deaveraging methodology applied in South Carolina utilized the wire center level costs for the wire centers that were included in each zone to calculate the average monthly rate for each zone"). BellSouth demonstrates that UNE zone one includes retail rate groups seven and six (average loop costs of $14.75 and $15.98, respectively); UNE zone two includes retail rate groups five and four (average loop costs of $21.45 and $21.25, respectively); and UNE zone three includes retail rate groups three, two, and one (average loop costs of $24.97, $27.40, and $33.80, respectively). *See id.* at para. 27, Table 1.

[353] *North Carolina Commission Recommended Order Concerning Geographic Deaveraging* at 24, 42; *North Carolina Commission Order Finalizing Deaveraged UNE Rates* at 3. *See also Alabama Commission UNE Rate Order* at 67-68 (concluding that a deaveraging methodology based on wire center costs "more closely meets the requirements of Rule 507(f) to use 'cost related zones' as well as the underlying principals [sic] of the [19]96 Act").

[354] BellSouth Ruscilli/Cox Reply Aff. at para. 30 & Tables 2-3.

[355] *Id.* at Table 3. WorldCom does not dispute this analysis but contends that use of the Alabama Commission's deaveraging approach would lower UNE loop rates in zone one in South Carolina by $0.89. WorldCom Reply Frentrup Decl. at para. 19. As WorldCom itself concedes, however, such an approach would also increase UNE loop rates in zone three by $4.03. *Id.* This evidence does not show that South Carolina's deaveraging method is not "cost-related" within the meaning of 47 C.F.R. § 51.507(f)(1). In addition, state commissions have considerable discretion in setting the pricing demarcations between UNE rate zones (e.g., whether the demarcation between zones one and two is 115% or 150% of average costs). These determinations may have a substantial effect on UNE rates, whether or not a state commission adopts a wire-center cost approach to deaveraging. Thus, that the use of the Alabama Commission's approach would lower UNE rates in one zone but raise them in another is not dispositive here.

usage of their customers in substantially the same time and manner that a BOC provides such information to itself.[356] BellSouth offers three types of Daily Usage Files (DUF) in Alabama, Kentucky, North Carolina, South Carolina, and Mississippi: the Access Daily Usage File (ADUF);[357] the Optional Daily Usage File (ODUF);[358] and the Enhanced Optional Daily Usage File (EODUF).[359]

109. *Challenges to the DUF Rate.* AT&T and WorldCom challenge the conclusions of the Alabama, Kentucky, North Carolina, South Carolina, and Mississippi commissions that BellSouth's DUF rates comply with basic TELRIC principles.[360] Birch also raises a DUF-related issue in its reply. As a preliminary matter, we dismiss Birch's argument that the Commission should require BellSouth to offer Birch SGAT DUF rates in its private interconnection agreement with BellSouth.[361] As Birch concedes, Commission rules do not require BellSouth to make SGAT rates available in an interconnection agreement.[362] Birch is not alleging any error with respect to the SGAT DUF rates. Indeed, Birch has not alleged any specific section 271 violation. Accordingly, we reject Birch's arguments.

110. We also dismiss WorldCom's attack on DUF rates in Alabama and South Carolina because WorldCom challenges rates that are not currently charged by BellSouth in those states.[363] We similarly dismiss AT&T's attack on DUF rates in North Carolina because

[356] *See, e.g., BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9061-62, para. 85.

[357] ADUF provides the competitive LEC with records for billing interstate and intrastate access charges, whether the call was handled by BellSouth or an IXC. ADUF also provides records for billing reciprocal compensation charges to other local exchange carriers and IXCs for calls originating from and terminating to unbundled switch ports. ADUF includes records for both originating and terminating traffic. *See* BellSouth Application App. A, Vol. 5, Tab H, Affidavit of David P. Scollard (BellSouth Scollard Aff.) at paras. 11-12; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9062, para. 85 n.292.

[358] ODUF contains information on billable transactions for resold lines, interim number portability accounts, and unbundled switch ports. For end users who are served by resold lines, interim number portability, or unbundled switch ports (including the UNE-platform), a competitive LEC can use ODUF to bill for usage events associated with calls placed by those end users (*e.g.*, toll calls, operator assistance). BellSouth Scollard Aff. at para. 11; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9062, para. 85 n.292.

[359] EODUF is an enhancement to ODUF and includes usage records for local calls originating from a reseller's flat-rated lines (BellSouth's retail flat-rated local service offering purchased for resale). BellSouth Scollard Aff. at para. 11; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9062, para. 85 n.292.

[360] AT&T Comments at 30-34; WorldCom Comments at 12-13.

[361] Birch Reply at 2-4.

[362] *Id.* at 4.

[363] *See* Letter from Keith L. Seat, Senior Counsel – Federal Advocacy, WorldCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 1, 2002) (WorldCom August 1 *Ex Parte* Letter) (acknowledging that the rates cited in the WorldCom Comments are not the current BellSouth SGAT rates in South Carolina and Alabama).

this challenge is based on rates that are no longer in effect.[364] We find that this modification to BellSouth's application after it was filed did not substantially burden commenters as it was made before reply comments were filed.[365] Furthermore, no party has separately challenged the current North Carolina DUF rates. We address below AT&T's arguments regarding the cost study underlying all of BellSouth's DUF rates and WorldCom's argument that BellSouth already recovers DUF-related costs through its shared and common cost factors.

111. AT&T attacks the cost study underlying the current DUF rates in Alabama, Kentucky, North Carolina, South Carolina, and Mississippi as not TELRIC-compliant.[366] This same cost study was also used as the basis for the DUF rates in Georgia.[367] AT&T alleges that DUF costs are inflated due to the following TELRIC errors in BellSouth's DUF cost study: (1) the costs of certain messages are disproportionately allocated only to competitive LECs when they should also be shared by BellSouth;[368] (2) BellSouth significantly understates the number of competitive LEC ADUF and ODUF messages;[369] (3) the cost study uses inconsistent and inappropriate cost recovery periods;[370] (4) BellSouth uses improper accounting in classifying certain expenses;[371] and (5) the cost of magnetic tapes is improperly charged to customers that use only electronic feed.[372]

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[364] *See* AT&T Comments at 31-32. BellSouth filed new rates in North Carolina on July 22, 2002, that are in line with the DUF rates in the other BellSouth states. *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed July 24, 2002) (BellSouth July 24 *Ex Parte* Letter); Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth Corporation, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 5, 2002) (BellSouth August 5 *Ex Parte* Letter). These rates were accepted by the North Carolina Commission on August 5, 2002. *See* BellSouth August 8 *Ex Parte* Letter (attaching order of the North Carolina Commission accepting the revised rates).

[365] *See SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20764, para. 93 (stating that a collocation rate modification to SWBT 271 application "did not substantially burden commenters as it was made before comments were filed"); *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9064, para. 89 (dismissing criticism of Louisiana DUF rates because "the only challenge was based on rates that existed before the most current rates were filed" and the old rates "are no longer relevant").

[366] AT&T Comments at 30-34.

[367] BellSouth Reply at 43; BellSouth Caldwell Reply Aff. at para. 41.

[368] AT&T Comments at 32; AT&T Comments App., Tab F, Declaration of Steven E. Turner (AT&T Turner Decl.) at paras. 10, 26-30.

[369] *Id.* at paras. 15, 39-48.

[370] *Id.* at paras. 11, 31-32.

[371] *Id.* at paras. 13, 35-36.

[372] *Id.* at paras. 14, 37-38. AT&T originally also argued that the cost study contains mathematical errors related to investments but has since withdrawn that argument. *See id.* at paras. 12, 33-34; AT&T Reply Comments App., Tab D, Reply Declaration of Steven E. Turner (AT&T Turner Reply Decl.) at para. 1 n.1.

112. We note at the outset that no commenter made these arguments during the state proceedings when DUF rates were set.[373] Although we do not require parties to raise all pricing issues at the state level before raising them in a section 271 proceeding, it is generally impractical for us to make the fact-specific findings AT&T requests concerning the cost study underlying the DUF rates.[374] In any event, AT&T has failed to demonstrate that any of the state commissions committed clear error. We discuss each of AT&T's arguments in turn below.

113. AT&T first argues that BellSouth fails to include the appropriate number of messages in calculating DUF rates.[375] AT&T also argues that BellSouth disproportionately allocates a high number of labor hours to competitive LEC messages, and also allocates certain DUF processing costs solely to competitive LEC messages that should be allocated to all messages, including those of BellSouth.[376] AT&T contends that, consequently, BellSouth's DUF study fails to account for the total demand for DUF, causing competitive LECs to pay inflated DUF costs.[377] BellSouth disputes this argument, asserting that its cost study accurately reflects the appropriate mix of message types based on the particular application or job.[378] BellSouth states that, for each job, it first calculates the total cost of the job and then divides that cost by the total demand.[379] It explains that, although BellSouth messages are not labeled as "DUF" in the cost study, the cost study nonetheless incorporates BellSouth demand by attributing certain processing jobs to both BellSouth and competitive LEC messages, while attributing others only to competitive LEC messages.[380] BellSouth further states that the cost of a DUF job in terms of both labor and computer resources is spread over the number of messages processed by that

[373] AT&T claims that it did not have an opportunity to challenge BellSouth's DUF rates in Alabama, Mississippi, North Carolina, and South Carolina prior to this section 271 proceeding because the DUF rates proposed by BellSouth in those states are based on SGAT filings made by BellSouth "either after the conclusion of state rate proceedings or in the weeks prior to its Section 271 application." AT&T Reply at 28 n.28; *see also* AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 4-5. We reject this assertion. AT&T challenges BellSouth's DUF cost study from which the DUF rates are derived. The cost study underlying the DUF rates at issue here is the same cost study that was before each of the state commissions in each state UNE rate proceeding, except that the demand figures have been updated to reflect increased DUF demand, thus resulting in lower rates. Accordingly, the challenges AT&T raised here could in fact have been raised in state proceedings. BellSouth August 29 *Ex Parte* Letter.

[374] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9045, para. 49; *see also* section IV.B.1, *supra*.

[375] AT&T Turner Decl. at paras. 10, 26-30.

[376] *Id.*

[377] AT&T Comments at 32; AT&T Turner Decl. at paras. 10, 26-30.

[378] BellSouth Caldwell Reply Aff. at para. 43.

[379] *Id.*

[380] *Id.* For example, BellSouth states that Jobs QA01 and MC01A01 include BellSouth demand, while Jobs MD03A and MD03B do not. BellSouth Caldwell Reply Aff. at para. 43 & Exh. DDC-3. AT&T, however, does not provide any specific information regarding which, if any, of the particular jobs detailed in the cost study it believes are incorrectly attributed only to competitive LEC messages.

job.[381] BellSouth finally states that the amount of labor in terms of developmental hours, by job, was developed by the experts who would be programming and maintaining the computer systems associated with DUFs.[382] In the absence of specific and credible evidence to the contrary, we find that BellSouth's allocation of labor costs and other DUF processing costs is reasonable. Moreover, AT&T could have raised its concerns with the five state commissions but never did so. Thus we lack the benefit of the states' analyses of these contentions. Based on this record, we conclude that the state commissions did not commit clear error in adopting DUF rates incorporating these assumptions.

114. In a related argument, AT&T contends that the BellSouth cost study contains various errors related to DUF processing forecasts.[383] AT&T first contends that BellSouth has understated the quantity of ODUF messages in the cost study, thereby overstating the cost per message that competitive LECs must bear.[384] AT&T notes, for example, that while the cost study reflects two different numbers for ODUF messages processed in April 2001, BellSouth inappropriately uses the lower number as the starting point for the three year forecast.[385] BellSouth states that it correctly used the lower numbers because the higher numbers referenced by AT&T include messages generated by competitive LECs that do not order DUFs and are therefore not billed for such messages.[386] We agree that it would be inappropriate to use the higher numbers in the forecasts at issue if those additional messages are never billed to any party.

115. AT&T's other DUF forecasting-related arguments relate to the assumptions BellSouth incorporates into the future projections of DUF messages and future DUF costs. AT&T argues that BellSouth failed to incorporate actual data in forecasting growth rates and assumes an unrealistic decline in UNE-platform competition in the BellSouth region, resulting in unrealistically low projected growth rates.[387] Finally, AT&T argues that BellSouth assumes an unrealistically high growth rate in DUF-related charges, inconsistent with actual growth rates

[381] BellSouth Caldwell Reply Aff. at para. 43. A worksheet to the cost study file contains the number of messages used in the cost study and the annual demands, by job. *Id.* at para. 44. Again, AT&T does not provide specific detail regarding which message volume or annual demand figures it believes are inappropriate.

[382] *Id.* at para. 45. AT&T points to only one job to which it asserts BellSouth attributed disproportionately high labor costs based on the number of messages processed, but it offers no expert testimony or other evidence to demonstrate that this particular job necessarily requires fewer labor hours. AT&T Turner Decl. at para. 29.

[383] AT&T Turner Decl. at paras. 39-48.

[384] *Id.* at paras. 40-41.

[385] *Id.* at para. 40.

[386] *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (filed Aug. 14, 2002) (BellSouth August 14 *Ex Parte* Letter).

[387] AT&T Turner Decl. at paras. 43-46.

and also with BellSouth's low projected growth rates of DUF messages.[388] In response to these last two arguments, BellSouth replies that the demand data used to develop the current DUF rates are consistent with the recent forecast used in Georgia and correspond to the timeframe for the cost studies.[389] Moreover, BellSouth emphasizes that the forecasts are based on the best available, most recent data.[390] We find that BellSouth has provided a reasonable explanation of its DUF-related processing forecasts. BellSouth's forecast of incremental messages is based on a study of actual message growth during the period January 2000 to February 2001, and its projection of competitive LEC DUF-related charges is based on actual data from September 2000 through February 2001.[391] AT&T has not shown that these study periods are unreasonable or that they lead to a TELRIC error in the resulting forecasts. In the circumstances presented here, AT&T could have raised its concerns with the five state commissions but never did so. Based on the record before us, we conclude that the state commissions did not commit clear error in adopting DUF rates incorporating these forecast assumptions.

116. AT&T next argues that BellSouth uses inconsistent and inappropriate "cost recovery periods" for its DUF costs.[392] AT&T uses the term cost recovery period to refer to the future period for which BellSouth projects DUF investment and demand to develop a per unit investment.[393] We prefer to use the term "study period" to refer to this period to avoid confusing it with the period over which the investment is depreciated for purposes of developing a rate. BellSouth's ODUF per unit investment estimate reflects three years of investment and demand data.[394] Its ADUF per unit investment estimate reflects ten years of investment and demand data.[395] BellSouth depreciates on a straight-line basis the per unit investment derived from these data over a 60-month period, BellSouth's estimate of the life of the DUF assets, to derive a monthly rate. That is, BellSouth's monthly rate recovers one-sixtieth of the per unit investment. AT&T asserts that the proper study period is five years because this is the time period over which BellSouth amortizes these investments.[396] Although it may be preferable for BellSouth to use a study period that matches the period over which the investment is depreciated, AT&T has not demonstrated that BellSouth's use of three-year and ten-year study periods causes competitive LECs to incur higher DUF charges than they would have had BellSouth adopted a

388 *Id.* at paras. 47-48.

389 BellSouth Caldwell Reply at para. 46; *see also* BellSouth August 14 *Ex Parte* Letter.

390 *See generally* BellSouth August 14 *Ex Parte* letter.

391 *See id.*

392 AT&T Turner Decl. at paras. 11, 31-32.

393 *See id.* at paras. 11, 31-32.

394 BellSouth Caldwell Reply Aff. at para. 47.

395 *Id.*

396 AT&T Turner Decl. at paras. 11, 31-32.

five-year study period. In fact, the use of a ten-year study period for ADUF rate development clearly results in lower rates than would a five-year period. We cannot determine, on this record and within the time constraints of the 90-day statutory review period for section 271 applications, the degree to which those costs savings are offset by the shorter study period used to develop ODUF rates. In the circumstances presented here, AT&T could have raised its concerns with the five state commissions but never did so. Based on the record before us, we find that the state commissions did not commit clear error in adopting DUF rates incorporating these varying cost recovery periods.

117. Fourth, AT&T argues that BellSouth violates TELRIC principles by failing to capitalize all DUF system development costs. AT&T argues that, although BellSouth properly capitalized labor hours associated with DUF system development, it inappropriately expensed other associated costs.[397] BellSouth maintains that it has followed accepted accounting principles in expensing such costs. BellSouth explains that, under accepted accounting practices, it is appropriate to capitalize actual programming costs while expensing overhead or one-time costs associated with development of internal software.[398] We find that BellSouth's explanation of its accounting methodology is reasonable and that there is insufficient evidence to show that the state commissions committed clear error in adopting DUF rates based upon this accounting methodology.

118. AT&T's final argument is related to the format in which competitive LECs receive DUF messages. BellSouth offers competitive LECs a choice of receiving such messages either electronically for a per-message charge, or via magnetic tape, with billing on a per-tape basis. AT&T argues that BellSouth has included the costs of providing the magnetic tape feed in the general message processing costs, which results in all competitive LECs being forced to bear a portion of the magnetic tape charges.[399] BellSouth contends that AT&T inaccurately characterizes the costs at issue. BellSouth explains that these are not recurring charges for magnetic tape use, but actually one-time development costs associated with the initial production of a magnetic tape for system testing purposes.[400] BellSouth further explains that, in its cost

[397] *Id.* at paras. 35-36.

[398] BellSouth states that this methodology is consistent with the Statement of Position (SOP) 98-01, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use, which has been accepted by the Commission. BellSouth Caldwell Reply at para. 51. *See 1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements*, CC Docket No. 98-81, Report and Order, 14 FCC Rcd 11396 (1999). AT&T does not dispute this assertion. AT&T does dispute, however, that SOP 98-01 is applicable at all, arguing that paragraph 15 of SOP 98-1 establishes that SOP 98-1 does not apply to computer software that is used or marketed to third parties. *See* AT&T August 23 Pricing and Growth Tariff *Ex Parte* Letter at 5. AT&T asserts that BellSouth is marketing the DUF software development and processes to competitive LECs as an unbundled element and that the provisions of SOP 98-1 therefore do not apply. *Id.* We disagree. BellSouth sells the DUF reports themselves and not DUF software to competitive LECs. Indeed, by its own terms, SOP 98-01 applies to "software used by the vendor in the production of the product or providing the service" where "the customer does not acquire the software or the future right to use it." SOP 98-01 at para. 15.

[399] AT&T Turner Decl. at paras. 37-38.

[400] BellSouth Caldwell Reply at para. 52.

study, all developmental costs are recovered over projected number of messages, including the cost of producing the initial tape.[401] Based on the record before us, we find that BellSouth's explanation is reasonable and that there is insufficient evidence to show that the state commissions committed clear error in adopting DUF rates incorporating such charges.

119. WorldCom argues that ODUF and ADUF charges should be eliminated altogether because BellSouth already recovers DUF costs in the shared and common costs that BellSouth adds to the direct costs of other UNEs.[402] We rejected this identical argument in the *BellSouth Georgia/Louisiana Order.*[403] The Mississippi Commission also rejected this contention, finding that "BellSouth's cost filing in this proceeding outlines the adjustments BellSouth made to remove the directly identified costs. BellSouth has reduced its common and shared factor by the amount of expense that it included in the development of its daily usage file charges."[404] BellSouth provides evidence that the company identified and removed DUF-related costs that are directly assigned in the cost studies from the development of shared and common factors in Alabama, Kentucky, North Carolina, South Carolina, and Mississippi.[405] Accordingly, we reject this argument, and find that there is insufficient evidence to show that the state commissions committed clear error in adopting separate charges for ODUFs and ADUFs.

120. *Conclusion.* Based on the foregoing, we find that the rates that BellSouth charges to provide DUFs to competitive LECs are just, reasonable, and nondiscriminatory in compliance with checklist item 2.

c. Non-Recurring Charges

121. *OSS Charge.* BellSouth imposes a non-recurring charge to recover the incremental costs that it incurs to develop, implement, and maintain the electronic interfaces to its OSS in order to provide competitive LECs with access to the OSS.[406] BellSouth states that these costs are related to "service order processing" and are imposed per Local Service Request (LSR).[407] As stated in BellSouth's SGATs, these per-LSR OSS charges are $5.70 in Mississippi, $5.83 in Alabama, $5.92 in South Carolina, and $7.88 in Kentucky.[408] The OSS charge in North Carolina, which is not at issue here, is a single flat monthly fee of $305, regardless of the number

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401 *Id.*

402 WorldCom Comments at 12; WorldCom Frentrup Decl. at paras. 24-25.

403 *BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9065, para. 93.

404 *See Mississippi Commission UNE Rate Order* at 44; *see also* Mississippi Commission Reply at 9.

405 *See* BellSouth Caldwell Reply at para. 42.

406 *Mississippi Commission UNE Rate Order* at 27.

407 BellSouth Caldwell Reply Aff. at para. 54.

408 *Id.* at para. 55.

of "orders" (*i.e.*, loops) processed.[409] BellSouth also states that it offers competitive LECs a region-wide OSS rate of $3.50 per LSR in its standard interconnection agreement, which many competitive LECs, including ITC^DeltaCom and Talk America, have agreed to pay instead of the OSS charges in BellSouth's SGATs.[410]

122. Whether a competitive LEC pays the $5.70-$7.88 OSS charges in BellSouth's SGATs or the $3.50 OSS charge available in BellSouth's region-wide interconnection agreement, BellSouth states that up to 25 loops may be included in a single LSR provided that the loops are for the same customer at the same location.[411] This has a substantial effect on the final per-loop OSS charge. For example, with respect to UNE-platform orders in Kentucky, the OSS charge for UNE migration can be as low as $0.41 per loop if a competitive LEC bundles 25 loops serving the same location.[412]

123. WorldCom challenges the per-LSR OSS charges in BellSouth's SGATs in Mississippi, Alabama, South Carolina, and Kentucky.[413] These charges, according to WorldCom, do not compare with those in other BellSouth states, such as Louisiana, where the charge is $2.98, or Georgia, where it is $0.19.[414] WorldCom claims that such differences in OSS charges among different in-region states cannot be justified according to state-specific demand because BellSouth's OSS is regional.[415] WorldCom also contends that it is improper for

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[409] *Id.* at para. 54. BellSouth has recently submitted cost studies to the North Carolina Commission that would re-structure the OSS charge to be identical to that in the other four states – namely, on a per-LSR basis. *Id. See also* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 (Sept. 17, 2002) (BellSouth September 17 *Ex Parte* Letter).

[410] BellSouth Ruscilli/Cox Reply Aff. at para. 44.

[411] Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 10-11 (Aug. 15, 2002) (BellSouth August 15 *Ex Parte* Letter); BellSouth September 17 *Ex Parte* Letter.

[412] We calculate this figure by dividing $7.88 by 25 to get an OSS charge of $0.31 per loop. BellSouth then adds a $0.10 UNE-platform charge that is imposed on each loop, regardless of the number of loops provisioned. *See* BellSouth Application App. A, Vol. 4a, Tab G, Exh. JAR/CKC-1at 13, line P.1 (Alabama); Vol. 4b, Tab G, Exh. JAR/CKC-2 at 10, line P.1 (Kentucky); Vol. 4c, Tab G, Exh. JAR/CKC-3 at 13, line P.1 (Mississippi); Vol. 4d, Tab G, Exh. JAR/CKC-4 at 14, line P.1 (North Carolina); Vol. 4e, Tab G, Exh. JAR/CKC-5 at 15, line P.1 (South Carolina); *see generally* BellSouth Caldwell Reply Aff. at para. 54; BellSouth September 17 *Ex Parte* Letter.

[413] WorldCom Comments at 11. WorldCom does not challenge the OSS charge in North Carolina, which WorldCom estimates is $0.06. *Id.* WorldCom derives this figure by assuming that a competitive LEC places 5,000 orders per month in North Carolina. BellSouth Caldwell Reply Aff. at para. 54. BellSouth contends that there is no factual basis for this assumption. *Id.* We need not resolve this dispute because AT&T does not challenge the North Carolina OSS charge.

[414] WorldCom Comments at 11.

[415] *Id.*

BellSouth to recover any cost for OSS development because such costs are already recovered in the common cost factor.[416]

124. WorldCom limits its attacks on the OSS charges to the two issues summarized above – namely, that the disputed OSS charges are higher than those in other BellSouth states and that, in any event, BellSouth recovers these costs twice. Significantly, WorldCom does not challenge the cost study establishing these OSS charges and does not otherwise contend that the disputed OSS charges do not comply with the Commission's TELRIC pricing principles.

125. As an initial matter, BellSouth asserts that WorldCom improperly compares OSS charges among various BellSouth states.[417] BellSouth points out that the Commission has not previously found simple comparisons of non-recurring charges between states to be dispositive of TELRIC compliance.[418] BellSouth is correct.[419] BellSouth also shows that the OSS charges in Georgia and North Carolina are not comparable to those in Alabama, Kentucky, Mississippi, or South Carolina.[420] In both Georgia and North Carolina, OSS costs are recovered on an entirely different basis – that is, according to a monthly flat fee.[421] In Georgia, this fee is $550 for the first 1,000 orders, and in North Carolina, as noted above, the charge is $305 for an unlimited number of orders.[422] In Louisiana, BellSouth filed nearly the same OSS rate ($11.74) as it did in Alabama and Kentucky ($11.66), Mississippi ($11.71), and South Carolina ($11.83).[423]

126. BellSouth also explains that, although it filed the same regional OSS cost study with each state commission, the state commissions directed BellSouth to make numerous state-specific adjustments to the cost study.[424] For example, the Alabama, Mississippi, and South Carolina Commissions reduced BellSouth's proposed rates by 50 percent,[425] resulting in similar rates in these states -- $5.84 (Alabama); $5.70 (Mississippi); and $5.92 (South Carolina).[426] In

416 *Id.* at 11-12.

417 BellSouth Reply at 45-46.

418 *Id.* at 45.

419 *See Verizon New Jersey Order*, 17 FCC Rcd at 12306, para. 70 n.193 (stating that comparison of hot cut rates between states is not dispositive of TELRIC compliance).

420 BellSouth Caldwell Reply Aff. at paras. 54, 57.

421 *Id.*

422 *Id.*; *see also* BellSouth September 17 *Ex Parte* Letter.

423 BellSouth Caldwell Reply Aff. at para. 55.

424 *Id.*

425 *Id.* at para. 56.

426 *Id.*

Kentucky, the commission did not order such an across-the-board rate reduction.[427] Instead, it reviewed individual work time estimates, made specific adjustments to the electronic service order charge (element N.1.1.), and accepted BellSouth's proposed electronic interface costs.[428] We find that BellSouth has demonstrated that its OSS charges are in fact based on a regional cost study, and it has provided a reasonable explanation of the variations among its OSS charges.[429] We conclude that this variation among states is not sufficient to demonstrate any TELRIC error, and, in any event, WorldCom does not claim that any of the state-specific OSS charge adjustments by the Alabama, Kentucky, Mississippi, or South Carolina Commissions violate the Commission's TELRIC principles.

127. Finally, WorldCom alleges that BellSouth already recovers its OSS development costs in its shared and common costs.[430] Both the Kentucky and Mississippi Commissions considered and rejected this specific argument.[431] WorldCom does not provide any evidence in support of this broad allegation. BellSouth, on the other hand, explains that "the OSS costs included in the shared and common costs relate to legacy systems only, not the costs associated with developing, programming and maintaining the new ordering interfaces used by [competitive] LECs."[432] Thus, BellSouth asserts that it incurs costs in providing simple *access* to OSS and that such costs "do not include the legacy OSS systems themselves, which are reflected in the shared and common costs."[433] Without evidence of the alleged double recovery of OSS costs and in light of BellSouth's explanation of the different OSS costs recovered in its shared and common costs, we conclude that BellSouth's OSS charges in Alabama, Kentucky, Mississippi, and South Carolina comply with the Commission's TELRIC pricing principles.

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427 *Id.*

428 *Id.*

429 *Id.* We find that any *de minimis* cost differences between Alabama and Kentucky on the one hand and Mississippi and South Carolina on the other do not demonstrate a violation of TELRIC principles.

430 WorldCom Frentrup Reply Decl. at para. 29.

431 *See Kentucky Commission UNE Rate Order* at 32 (rejecting WorldCom's argument that OSS costs are included in BellSouth's common costs and accepting BellSouth's contention that the "OSS costs included in shared and common costs relate to legacy systems only"); *Mississippi Commission UNE Rate Order* at 27 (finding that WorldCom is "simply wrong" that OSS costs are in included in BellSouth's common costs).

432 BellSouth Caldwell Reply Aff. at para. 59.

433 BellSouth Surrebuttal Testimony of D. Daonne Caldwell Before the Mississippi Public Service Commission, Docket No. 2000-UA-999, at 32 (June 11, 2001) (emphasis added). That WorldCom has not provided sufficient evidence of double recovery of OSS costs in this instance should not, however, be construed as an endorsement or rejection of any particular method of recovering OSS costs.

2. Access to Operations Support Systems

128. We find, as did the state commissions,[434] that BellSouth provides nondiscriminatory access to its OSS and, thus, satisfies the requirements of checklist item 2. We find that the evidence presented in this record shows that BellSouth provides nondiscriminatory access to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. We base this determination on BellSouth's actual performance in each of the states and, in certain instances, on its performance in Georgia. The Commission may evaluate BellSouth's performance in an individual state for enforcement purposes pursuant to section 271(d)(6).[435]

129. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers,[436] and consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[437] We analyze whether BellSouth has met the nondiscrimination standard for each OSS function using the two-step approach outlined in prior orders.[438] Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.[439] Under the second inquiry, we examine performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.[440] The most probative evidence that OSS functions are operationally ready is actual

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434 Alabama Commission Comments at 173; Kentucky Commission Comments at 30; Mississippi Commission Comments at 11; North Carolina Commission Comments at 163; South Carolina Commission Comments at 1-3.

435 47 U.S.C. § 271(d)(6).

436 *Bell Atlantic New York Order*, 15 FCC Rcd at 3989-90, para. 83; *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Service in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 585, para. 82 (*BellSouth South Carolina Order*); *SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

437 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3900, para. 83; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653-57, paras. 83-90; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-49, 585, paras. 14-18, 82.

438 *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 3991-92, paras. 85-86; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6284-85, paras. 104-05.

439 *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (stating that the Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."). For example, a BOC must provide competing carriers the specifications necessary to design their systems' interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

440 We assess "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter." *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

commercial usage in the state for which the BOC seeks section 271 authorization.[441] Absent sufficient and reliable data on commercial usage in a state, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Where, as here, the BOC proves that many of the OSS functions in the states for which it seeks section 271 authorization are the same as in a state for which we have already granted such authorization, we will also look to performance in the latter state as additional evidence with which to make our determination.[442] Finally, we focus our analysis in this Order on a handful of issues that are contested by commenting parties or in areas where performance has deteriorated since issuance of the *BellSouth Georgia/Louisiana Order*.

a. Relevance of BellSouth's Georgia OSS

130. We find that BellSouth, through the Pricewaterhouse Coopers (PwC) report, provides evidence that its OSS in Georgia are substantially the same as the OSS in each of the five states. We shall consider BellSouth's commercial OSS performance in Georgia and the Georgia third party test to support this application. Moreover, BellSouth's showing enables us to rely, in most instances, on findings relating to BellSouth's OSS from the *BellSouth Georgia/Louisiana Order* in our analysis of BellSouth's OSS in the five states. In addition, we can examine data reflecting BellSouth's performance in Georgia where low volumes yield inconclusive or inconsistent information concerning BellSouth's compliance with the competitive checklist.[443] This "anchor state" approach was developed in the *SWBT Kansas/Oklahoma Order*[444] and has been used frequently since then.[445]

131. Consistent with our "anchor state" precedent, as articulated in the *SWBT Kansas/Oklahoma Order*,[446] BellSouth relies heavily in this application on evidence concerning its Georgia OSS.[447] We have held that companies may use evidence from an "anchor state" when the OSS are regional.[448] BellSouth asserts that its OSS in Georgia are substantially the same as the OSS in each of the states and, therefore, evidence concerning its OSS in Georgia is relevant

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[441] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6285, para. 105.

[442] *Id.*

[443] *Id.* at 6254-55, paras. 36-37, 6286-87, paras. 106-08. As noted above, the Commission may evaluate BellSouth's performance in an individual state for enforcement purposes pursuant to section 271(d)(6).

[444] *Id.*

[445] *See, e.g., Verizon Rhode Island Order*, 17 FCC Rcd at 3327-28, paras. 59-60; *Verizon Vermont Order*, 17 FCC Rcd at 7647, para. 40; *Verizon Maine Order*, 17 FCC Rcd at 11682-83, para. 36.

[446] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254-55, paras. 36-37, 6286-87, paras. 106-08.

[447] *Id.* at 6286-87, paras. 106-07.

[448] *Id.*

and should be considered in our evaluation of each state's OSS.[449] To support its claim, BellSouth submits the PwC report.[450]

132. PwC conducted an "attestation examination" of BellSouth's assertion that: (1) the same pre-ordering and ordering OSS, processes and procedures are used to support competing LEC activity across BellSouth's nine-state region, and that (2) there are no material differences in the functionality or performance of BellSouth's two order entry systems: Direct Order Entry (DOE) and Service Order Negotiation System (SONGS).[451] PwC concluded that, in its opinion, BellSouth's assertions were "fairly stated, in all material respects."[452] In addition, as the Department of Justice expressly recognizes, the systems and processes serving the five states are largely the same as those at issue and approved in the *BellSouth Georgia/Louisiana Order* and therefore, notwithstanding the lower level of competition in the five states, finds OSS sufficient to support competitive entry.[453]

133. We reject commenters' claims that BellSouth's OSS are not regional.[454] The record indicates that the PwC examination closely modeled the successful "Five State Regional OSS Attestation Examination" performed in the context of SWBT's Kansas/Oklahoma section 271 application. BellSouth has provided detailed information regarding the "sameness" of BellSouth's systems in the five states, including their manual systems and the way in which BellSouth personnel do their jobs.[455] Finally, we note that, while commenters initially contended

[449] BellSouth Application at 59-61; BellSouth Application App. A, Vol. 6a, Tab I, Affidavit of William N. Stacy (BellSouth Stacy Aff.) at para. 61; BellSouth Reply at 22-24; BellSouth Reply App., Vol 3a, Tab H, Reply Affidavit of William N. Stacy (BellSouth Stacy Reply Aff.) at paras. 158-69; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6286-87, paras. 106-07.

[450] BellSouth Stacy Reply Aff. at para. 159.

[451] In conducting its review, PwC examined the consistency of applications and technical configurations used to process pre-ordering and ordering transactions region-wide, and reviewed the consistency of documentation of systems and processes in BellSouth's local carrier service center (LCSC). BellSouth Application at 65-66; BellSouth Stacy Aff. at paras. 66-70 & Exh. OSS-10 at para 7; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9072-73,par as. 109-10.

[452] *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9072, para. 109; BellSouth Stacy Aff. at para. 70.

[453] Department of Justice Evaluation at 7.

[454] *See* AT&T Comments at 18-20; AT&T Reply at 18-19; WorldCom Comments at 1-2, 8-10; WorldCom Comments App., Tab A, Declaration of Sherry Lichtenberg (WorldCom Lichtenberg Decl.) at paras. 27-30; WorldCom Reply at 7-8. AT&T, for example, states that BellSouth's staggered single C implementation process made little sense if BellSouth's OSS were truly regional. AT&T Reply at 19.

[455] BellSouth Application at 60-62; BellSouth Reply at 22-23; BellSouth Stacy Reply Aff. at para. 161; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9073, para. 110.

that the Commission should rely upon the Tennessee Regulatory Authority's determination that BellSouth's OSS are not regional.[456] this determination has since been reversed.[457]

134. We also disagree with commenters' claims that BellSouth's application should fail because a third party did not examine BellSouth's OSS in each of the states.[458] In prior orders, the Commission has held that third party tests can provide critical information about the functionality and performance of a BOC's OSS.[459] The Commission has not, however, stated that checklist compliance cannot be proven without a third party test of an applicant's OSS.[460] Moreover, the PwC attestation leads us to conclude that the KPMG tests in Georgia and Florida also may yield information that is relevant and useful to our assessment of BellSouth's OSS in these five states. In any event, we emphasize that our analysis of an applicant's OSS rests on a wide range of evidence, of which evidence from third party tests is but one part. The need to rely on a third party test is reduced in this instance because BellSouth is relying on an OSS that this Commission recently found to be nondiscriminatory in the *BellSouth Georgia/Louisiana 271 Order*.

135. Finally, we reject Covad's claim that the independent third-party test in Georgia was flawed because KPMG failed to test critical aspects of BellSouth's OSS.[461] In the *BellSouth Georgia/Louisiana Order*, we found that the results of KPMG's test in Georgia provide meaningful evidence that is relevant to our analysis of BellSouth's OSS.[462] No commenters have presented sufficient evidence to cause us to reevaluate this conclusion.

b. Pre-Ordering

136. To comply with its obligation to provide nondiscriminatory access to OSS functions, BOCs must provide competing carriers with access to pre-ordering functions such as street address validation; telephone number selection; service and feature availability; due date information; customer service record information; and loop qualification information. We

456 AT&T Comments at 19; AT&T Comments App., Tab G, Declaration of Jay M. Bradbury and Sharon E. Norris (AT&T Bradbury/Norris Decl.) at paras. 138-46; WorldCom Comments at 8.

457 *See* BellSouth Reply at 23.

458 *See* AT&T Comments at 18-20; Covad Comments at 5-7; WorldCom Comments at 8-10; WorldCom Lichtenberg Decl. at 10-11. AT&T also contends that BellSouth cannot rely on the PwC report. *See* AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 6-7.

459 *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6291, para. 118.

460 *See id.*

461 *See* Covad Comments at 3, 5-7 (claiming that KPMG's third party test failed to test: 1) electronic ordering of stand alone xDSL loops by any of three electronic gateways (TAG, LENS or EDI); 2) BellSouth's ability to handle high volumes of manual orders for stand alone xDSL loops that cannot be handled manually; 3) electronic ordering of line sharing through the three gateways; and 4) electronic OSS for IDSL loops).

462 *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9072, para. 108.

conclude that for each of the application states, BellSouth demonstrates that it provides competing carriers with nondiscriminatory access to pre-ordering functions. We find that BellSouth generally meets or exceeds the applicable benchmarks for the OSS pre-ordering metrics. As discussed above, we find that BellSouth's pre-ordering functions are provided on a region-wide basis and therefore we rely on our previous approval of the same pre-ordering OSS systems and processes in the *BellSouth Georgia/Louisiana Order.*[463] We also note that each of the state commissions in the instant application found that BellSouth's pre-ordering functions comply with this checklist item.[464]

137. AT&T claims that outages in BellSouth's ordering interfaces interfere with its ability to obtain nondiscriminatory access to pre-ordering functions and that BellSouth's performance metrics do not reflect the actual number of times that the ordering interfaces are unavailable to competitors.[465] AT&T also contends that BellSouth improperly includes the hours of test servers and back-up servers in its calculations for the interface availability measure.[466] We disagree with AT&T's claims.[467] During the relevant period for this application, BellSouth generally met or exceed the applicable benchmarks for the OSS pre-ordering metrics.[468]

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[463] *See id.* at 9069-9073, paras. 103-11, 9076-87, 117-34.

[464] *See* Alabama Commission Comments at 149-61; Kentucky Commission Comments at 19-21; Mississippi Commission Comments at 11; North Carolina Commission Comments at 130-33; South Carolina Commission Comments at 1-3.

[465] AT&T Bursh/Norris Decl. at paras. 55-56. As in Georgia and Louisiana, competing carriers may use one of two BellSouth pre-ordering interfaces: (1) the Telecommunications Access Gateway (TAG) which is an application-to-application interface; or (2) the Local Exchange Navigation System (LENS) which is a graphical user interface (GUI). *See* BellSouth Application at 77-80; BellSouth Stacy Aff. at paras. 171-76. Competitive LECs may use these interfaces to submit orders for end users region-wide. BellSouth Application at 77; BellSouth Stacy Aff. at paras. 12, 173-74, 176, 191. *See also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9076, para. 117. Both interfaces are in active use by competitors and performance data submitted by BellSouth in its application demonstrate that both interfaces provide competitors with equivalent access to BellSouth's pre-ordering functions. *See* BellSouth Stacy Aff. at para. 13.

[466] AT&T Bursh/Norris Decl. at paras. 55-56.

[467] In a declaration attached to its comments, AT&T cites instances where BellSouth has not met the benchmark or parity standards during the relevant period. AT&T Bursh/Norris Decl. at paras. 76-187. We fully address BellSouth's performance with respect to these issues, *infra.*

[468] BellSouth Stacy Aff. at paras. 296-307. *See* D.1.1 (% Interface Availability – CLEC); D.1.2 (% Interface Availability – BST & CLEC); D.1.3 (Average Response Interval – CLEC (LENS)); D.1.3 (Average Response Interval – CLEC (TAG)). We note that these metrics provide regional data. In addition, the percent interface availability metrics record all system outages regardless of duration and is similar to the metric used by the other BOCs. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9077 n.393. Furthermore, BellSouth has generally met the benchmark or provided parity for almost all submetrics from March through June. BellSouth was only out of parity region-wide in one month for the following metrics: D.1.1.7 (% Interface Availability - CLEC, TAG); D.1.1.8 (% Interface Availability – CLEC, PSIMS); D.1.2.1 (% Interface Availability – BST & CLEC, ATLAS/COFFI); and for D.1.4.2.1 (Average Response Interval – CLEC (TAG), RSAG, by ADDR). We therefore find these misses to be isolated and not indicative of a downward trend.

BellSouth states that, although it had included test servers in the interface availability measure from April 2001 to November 2001, it has corrected this problem and data and test server hours are no longer included in this measure.[469] Due to this correction, we find that this problem, as well as AT&T's assertions, is now moot. Moreover, for purposes of determining BellSouth's compliance with checklist item 2, we only consider data for the relevant period (March through June). We also note that the performance metrics and data submitted by BellSouth in its application have been approved by the state commissions. AT&T presents no evidence in its comments to support its allegations that these metrics continue to include back-up and test servers or that BellSouth is not accurately reporting its performance. Accordingly, we do not find that this performance warrants a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

138. Birch contends that BellSouth's placement of pending service orders (PSOs) on customer service records (CSRs) adversely impacts competitors using BellSouth's pre-ordering functions.[470] Specifically, Birch states that PSOs create unnecessary provisioning delays because an order will be clarified back to a competitive LEC if a PSO is present on a CSR.[471] Birch also asserts that BellSouth's OSS systematically inserts unnecessary PSOs into end-user CSRs at the beginning of BellSouth's provisioning.[472] BellSouth explains, however, that its systems place a PSO on a CSR whenever a service request is entered into BellSouth's ordering systems, including a conversion request from a competing LEC such as Birch.[473] In addition, although Birch suggests that BellSouth is intentionally adding false PSOs to end-user CSRs where that customer has chosen to switch to Birch, nothing in the record substantiates this claim.[474] Rather, BellSouth investigated the two examples which Birch concluded were unexplained and found that the PSOs were appropriately placed.[475] Given this evidence, we do not find that BellSouth fails to comply with this checklist item.

139. We also reject ITC^DeltaCom's claim that BellSouth does not provide equivalent access to information concerning PSOs on a CSR.[476] Consistent with our analysis in the

[469] BellSouth Varner Reply Aff. at para. 49. BellSouth also states that there was no significant change in the measurement results due to this error. BellSouth Varner Reply Aff. at para. 49

[470] Birch Comments at 16-20.

[471] *Id.* at 16.

[472] *Id.* at 16-19.

[473] BellSouth Reply at 26; BellSouth Reply App., Vol 1a, Tab A, Reply Affidavit of Ken L. Ainsworth (BellSouth Ainsworth Reply Aff.) at paras. 36-37.

[474] Although Birch cites several examples of PSOs appearing at the beginning of the provisioning process, there is no specific evidence indicating that these accounts were targeted by BellSouth retail marketers. *See* Birch Comments at 16-20.

[475] BellSouth also found that the PSOs were the result of a customer request or Birch acting as an agent for its customer. BellSouth Ainsworth Reply Aff. at paras. 36-37.

[476] ITC^DeltaCom Comments at 1-2.

BellSouth Georgia/Louisiana Order, BellSouth provides a PSO flag in the LENS interface to alert competitive LECs that a service order is pending.[477] BellSouth explains that PSO information is proprietary customer information, but competitive LECs have the ability to track the details of pending service orders for their own customers using BellSouth's CSOTS.[478] Accordingly, we do not find that ITC^DeltaCom's claim warrants a finding of checklist noncompliance.

140. Covad's contention, that BellSouth plans to discontinue support for its current TAG pre-ordering interface prior to the introduction of Electronic Data Interchange (EDI) support for pre-ordering functions and thereby impose additional and unnecessary costs on Covad, is premature and thus not relevant to our determination here.[479] Specifically, Covad asserts that unless the Commission requires BellSouth to maintain its existing TAG interface until its makes its EDI interface available for pre-ordering functions, competitive LECs seeking to use the EDI interface for pre-ordering will have to migrate from the TAG interface to an alternative interface only to migrate again to the EDI interface.[480] Covad's claim appears to be inaccurate. Under BellSouth's current plans, no competitive carrier would have to transition to an alternative interface prior to the availability of an EDI pre-ordering interface.[481] We therefore reject Covad's claim and do not find that it warrants checklist noncompliance.

141. *Access to Loop Qualification Information.* We find, as did the state commissions,[482] that BellSouth provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*.[483] Specifically, we find

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[477] The Competitive LEC Service Order Tracking System (CSOTS) alerts competitive LECs to the presence of a PSO for one of their customers, but only allows the competitive LEC access to the actual details of the PSO if in fact the PSO was placed by the competitive LEC. *See* ITC^DeltaCom Comments at 1-2 n.1; BellSouth Ainsworth Reply Aff. at paras. 38-39; BellSouth Stacy Reply Aff. at para. 170; *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9077 n.392. BellSouth also states that its legacy systems are common to both retail and wholesale competitive LEC services and need to be accessed by both BellSouth retail and wholesale representatives to handle issues dealing with an order already in progress. *See* BellSouth August 14 OSS and Loops *Ex Parte* Letter at 7.

[478] BellSouth Ainsworth Reply Aff. at para. 39.

[479] Covad Comments at 17. The TAG gateway allows Covad to determine at the pre-ordering stage whether or not it can provide a customer with the DSL services that they want. *Id.*

[480] Covad Comments at 18.

[481] BellSouth explains that it will make the current version of TAG available until May 2003, and a later version of TAG (scheduled to be released in December 2002) available until December 2003. BellSouth Stacy Reply Aff. at para. 174. BellSouth plans to make EDI support for pre-ordering available in March 2003, before BellSouth discontinues support for the current version of the TAG interface. BellSouth Stacy Reply Aff. at paras. 180-81.

[482] Alabama Commission Comments at 211; Kentucky Commission Comments at 21; Mississippi Commission Comments at 3; North Carolina Commission Comments at 132-33; South Carolina Commission Comments at 1-3.

[483] The Commission's rules require BellSouth to provide competitors with access to all loop qualification information in its databases or internal records in the same time intervals that it is available to any BellSouth (continued....)

that BellSouth provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as any of its personnel could obtain it.[484]

142. Covad claims that inaccuracies in the loop qualification information in BellSouth's Loop Facilities Assignment and Control System (LFACS) database discriminate against competitive LECs.[485] We reject this argument. The Commission has never required incumbent LECs to ensure the accuracy of their loop qualification databases. Instead, the Commission requires that, to the extent the incumbent LEC has compiled loop qualification information for itself, it is obligated to provide competitive LECs with nondiscriminatory access to the same information.[486] Because BellSouth complies with this requirement, we find that Covad's claims regarding the alleged inaccuracy of BellSouth's LFACS database, even if true, do not warrant a finding of noncompliance with checklist item 2.[487]

143. We also reject Covad's claim that BellSouth's refusal to provide it with sufficient information to enable its technicians to locate demarcation points for the UCL-ND warrants a finding of checklist noncompliance.[488] The record makes clear that BellSouth's records typically do not set forth the precise location of the demarcation point for a given loop.[489] Instead, those records contain more general information that BellSouth's technicians are able to access to help them locate a particular demarcation point.[490] BellSouth states that, upon request, it provides Covad with the same general information regarding the location of demarcation points that is

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personnel, regardless of whether BellSouth personnel actually access that information. *See UNE Remand Order*, 15 FCC Rcd at 3885-86, paras. 427-31.

[484] *See* BellSouth Stacy Aff. at paras. 241-50; BellSouth Stacy Reply Aff. at paras. 185-90; *see also Verizon Massachusetts Order*, 15 FCC Rcd at 9016-17, para. 54.

[485] Covad Comments at 23, 31-32.

[486] *See UNE Remand Order*, 15 FCC Rcd at 3886, para. 429.

[487] We note that BellSouth disputes Covad's allegation that BellSouth's LFACS database is highly inaccurate. *See* BellSouth Stacy Reply Aff. at para. 185; Covad Comments at 31-32. We find it unnecessary to resolve this dispute because, as BellSouth has shown, competitive LECs have nondiscriminatory access to the information in that database.

[488] Covad Comments at 24-26. Under the Commission's rules, a "demarcation point" is "the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications, and terminal equipment, protective apparatus or wiring at a subscriber's premises." 47 C.F.R. § 68.3. In multi-tenant buildings, demarcation points may be located in telecommunications closets or equipment rooms where numerous loops terminate or in individual office suites or apartments. 47 C.F.R. § 68.105(b), (d).

[489] BellSouth Application Reply App., Vol. 2, Tab F, Reply Affidavit of W. Keith Milner (BellSouth Milner Reply Aff.) at paras. 3-4.

[490] *See id.* at para. 3.

available to BellSouth's own employees and in the same timeframe.[491] Covad thus has access to the information regarding demarcation point locations that is available to BellSouth in accordance with the *UNE Remand Order*. Therefore, we find that Covad's claim does not raise any issue regarding checklist noncompliance.[492]

c. Ordering

144. In this section, we address BellSouth's ability to provide competing carriers with access to the OSS functions necessary for placing wholesale and resale orders. We find, as did the state commissions,[493] that BellSouth provides carriers in each of the five states with nondiscriminatory access to its ordering systems. In the following discussion, we address the OSS issues primarily in dispute in this application: order confirmation notices; reject notices; flow-through; order completion notices; and jeopardy notices.

(i) Order Confirmation Notices

145. Based on the evidence in the record, we conclude, as did the state commissions,[494] that BellSouth generally provides timely order confirmation notices to competitive LECs in each of the five states.[495] BellSouth demonstrates that it generally meets or exceeds the relevant benchmark for each type of service in the months most relevant to this application.[496] During the

[491] BellSouth Ainsworth Reply Aff. at para. 41; BellSouth Milner Reply Aff. at paras. 3-4. BellSouth adds that it is currently conducting a region-wide trial under which it will provide Covad with demarcation point locations for all UCL-ND loops even if their provisioning does not otherwise require a dispatch. BellSouth Milner Reply Aff. at para. 6.

[492] We note that Covad also claims that BellSouth's practices with regard to demarcation point information violate BellSouth's interconnection agreement with Covad. Covad Comments at 25. If Covad believes that BellSouth's practices in this area violate these parties' interconnection agreement, it is more appropriate for Covad to seek redress before the state commissions under section 252 of the Act rather than in this proceeding.

[493] Alabama Commission Comments at 152-61; Kentucky Commission Comments at 21-27; Mississippi Commission Comments at 11; North Carolina Commission Comments at 133-39; South Carolina Commission Comments at 1-3.

[494] *See* Alabama Commission Comments at 159; Kentucky Commission Comments at 21-27; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 135-36; South Carolina Commission Comments at 1-3.

[495] BellSouth submits performance data showing firm order confirmation (FOC) Timeliness disaggregated by: (1) fully mechanized orders (i.e., orders that flow through); (2) partially mechanized orders that are submitted electronically but require some manual processing; and (3) manually submitted and processed orders. *See* BellSouth Varner Aff. at para. 170.

[496] *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.9 (FOC Timeliness – Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.12 (FOC Timeliness – Partially Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.13 (FOC Timeliness – Non-Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.9 (FOC Timeliness – Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.12 (FOC Timeliness – Partially Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.13 (FOC Timeliness – Non-Mechanized).

relevant period, BellSouth met or exceeded the 95 percent within the three-hour standard for electronically submitted UNE-P orders in each state with few exceptions.[497] Similarly, between March and June, BellSouth, on average, met or exceeded the 85 percent within 10 hours standard for partially mechanized orders[498] and the 85 percent within 36 hours standard for non-mechanized orders on all product types with one exception.[499] For resale orders, BellSouth met or exceeded the relevant benchmarks for almost every relevant submetric.[500] Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

146. For the mechanized and partially mechanized firm order confirmation (FOC) timeliness other non-design category, BellSouth indicates that several submetrics fell out of parity when BellSouth switched from PMAP 2.6 to 4.0.[501] According to BellSouth, the primary reason for the failure to meet the benchmark for these submetrics is an erroneous timestamp, causing certain orders to appear to have taken too long to process.[502] BellSouth states that there is a defect in PMAP 4.0 for orders submitted via LENS that occurs when the FOC and completion notice both are issued at the same time.[503] Because directory listing orders are generally completed at about the same time the FOC is returned, this problem frequently occurs

497 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.9 (FOC Timeliness – Mechanized). Specifically, BellSouth's mechanized FOC timeliness (other design) was below the benchmark in Alabama for one month during the relevant period. *See* Alabama B.1.9.14 (FOC Timeliness – Mechanized, Other Design). We find this miss to be an exception to BellSouth's performance and not indicative of a downward trend.

498 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.12 (FOC Timeliness – Partially Mechanized – 10 hours). Specifically, BellSouth's partially mechanized FOC timeliness for UNE-P orders was below the benchmark for one month in Alabama, one month in Kentucky, and one month in South Carolina. *See* Alabama/Kentucky/South Carolina B.1.12.3 (FOC Timeliness – Partially Mechanized – 10 hours, Loop + Port Combinations). In addition, BellSouth's partially mechanized FOC timeliness (other design) was below the benchmark for one month in Alabama. *See* Alabama B.1.12.14 (FOC Timeliness – Partially Mechanized – 10 hours, Other Design). We find these misses to be isolated and not indicative of a downward trend.

499 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.13 (FOC Timeliness – Non-Mechanized). Specifically, BellSouth's non-mechanized FOC timeliness (other design) was below the benchmark for one month in Alabama. *See* Alabama B.1.13.14 (FOC Timeliness – Non-Mechanized, Other Design). BellSouth's performance, however, was less than two percentage points below the benchmark.

500 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.9 (FOC Timeliness – Mechanized, Resale); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.12 (FOC Timeliness – Partially Mechanized – 10 hours, Resale); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.13 (FOC Timeliness – Non-Mechanized, Resale). Generally, BellSouth achieved the relevant benchmark, with a few minor exceptions. Specifically, BellSouth's partially mechanized FOC timeliness (residence) was below the benchmark for one month in Kentucky and one month in South Carolina. *See* Kentucky/South Carolina A.1.12.1 (FOC Timeliness – Partially Mechanized – 10 hours, Residence). BellSouth's performance, however, with respect to these measures, was less than four percentage points below the benchmark.

501 *See* BellSouth Varner Reply Aff.at para . l 59.

502 *Id.* at paras. 160-162.

503 *Id.* at paras. 156-61.

in the mechanized and partially mechanized FOC timeliness other non-design category, which is comprised almost entirely of directory listing LSRs.[504] When this error occurs, the timestamp for the FOC shown was at times erroneous and PMAP was fed this erroneous data to calculate FOC timeliness.[505] BellSouth has provided revised data for each of the states and generally meets the benchmark utilizing the correct timestamp.[506] Accordingly, based on BellSouth's overall performance, we conclude that BellSouth currently provides order confirmation notices in a manner that provides competitive LECs a meaningful opportunity to compete. In addition, BellSouth corrected this problem with its 10.6 release on August 24, 2002.[507] We, therefore, are confident that this issue has been resolved. We also note, in accordance with section 271(d)(6), that if BellSouth's performance in this area deteriorates, we may pursue appropriate enforcement action.

147. We also reject AT&T's claim that BellSouth's performance in providing competitive LECs with order status notices is inadequate because BellSouth has not provided them in a timely, accurate, and complete manner.[508] Specifically, AT&T claims that, on average, BellSouth takes eighteen hours to return a FOC or reject notice for electronically submitted LSRs that fall out for manual processing.[509] Because the record evidence of BellSouth's performance data demonstrates that BellSouth is generally meeting the relevant benchmarks for this measure, and since AT&T has not explained how it determined this eighteen-hour

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504 *Id.* at para. 162.

505 *Id.* at paras. 160-61.

506 According to the revised data, BellSouth generally met the relevant benchmark. Specifically, BellSouth's mechanized FOC timeliness (other non-design) performance was below the benchmark for one month in South Carolina. *See generally* South Carolina B.1.9.15 (FOC Timeliness – Mechanized, Other Non-Design). In addition, BellSouth's partially mechanized FOC timeliness (other non-design) performance data show that it was below the benchmark for one month in Alabama, two months in Kentucky, one month in Mississippi, and two months in South Carolina. *See generally* Alabama/Kentucky/Mississippi/South Carolina B.1.12.15 (FOC Timeliness – Partially Mechanized – 10 hours, Other Non-Design). Furthermore, BellSouth's performance in this area generally appears to be improving. *See* BellSouth Varner Reply Aff. at para. 163 & BellSouth Varner Aff. at Exh. PM-28; BellSouth August 14 OSS and Loops *Ex Parte* Letter at 5-6.

507 *See* Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 7 (filed Aug. 15, 2002) (BellSouth August 15 Non-pricing *Ex Parte* Letter); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1 (filed Sept. 9, 2002) (BellSouth September 9 *Ex Parte* Letter).

508 *See* AT&T Comments at 16.

509 *Id.* at 16-17. AT&T notes that while it takes 18 hours to return a FOC or rejection notice for a partially mechanized order, it only takes 15 minutes to return a FOC or rejection notice when the order is processed electronically. Thus, AT&T claims that these delays will result in the assignment of later due dates and provisioning delays for customers whose LSRs are processed manually. *See* AT&T Bradbury/Norris Decl. at para. 105.

timeframe, or its relevance to our analysis, we decline to make a finding of noncompliance based on these allegations.

148. US LEC states that BellSouth's FOCs fail to meet the requested due date or customer desired due date.[510] Specifically, US LEC contends that it has encountered numerous instances of "blind FOCs" where the competing carrier receives an order confirmation but is later notified that facilities are not available.[511] BellSouth, however, explains that when it receives a complete and corrected LSR, it returns a FOC and checks the facilities databases to determine if the facilities are available to do the work.[512] Moreover, BellSouth claims that a "blind FOC" could be issued if the information competitive LEC or BellSouth information in the facilities database is wrong and is not detected until the due date.[513] Therefore, in the absence of further evidence indicating systemic discrimination or a significant anticompetitive effect, we decline to find that this assertion warrants a finding of noncompliance.

(ii) Order Reject Notices and Order Rejections

149. We conclude, as did the state commissions,[514] that BellSouth provides competing carriers with order reject notices in a timely and nondiscriminatory manner.[515] Although we recognize BellSouth has failed to satisfy the benchmark standard for mechanically processed reject notices in each of the states for several submetrics, we find that BellSouth's overall performance is nondiscriminatory.[516] According to BellSouth, these missed submetrics are

[510] US LEC Comments at 17.

[511] *Id.* at 17-18.

[512] *See* BellSouth August 14 OSS and Loops *Ex Parte* Letter at 7.

[513] *See id.*

[514] *See* Alabama Commission Comments at 154-59; Kentucky Commission Comments at 21-27; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 136-37; South Carolina Commission Comments at 1-3.

[515] BellSouth requests that the Commission not rely on the FOC & Reject Response Completeness (Multiple Responses) metric because BellSouth contends that it does not provide valuable information as to whether a particular reject or response was appropriate or necessary. *See* BellSouth Varner Reply Aff. at paras. 149-50. We also note that the Commission has never relied on, nor do the state commissions, require this metric. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9089-90, para. 140 n.493. Consistent with our finding in the *BellSouth Georgia/Louisiana Order*, we believe that the Reject Interval metric provides a more probative evaluation of BellSouth's performance. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.4 - B.1.8 (Reject Interval).

[516] Although BellSouth failed to meet the 97% in one hour benchmark for mechanized UNE orders for several of the submetrics in each of the states, we note that BellSouth's performance was generally within six percentage points of the benchmark and order volumes were low. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.4 - B.1.8 (Reject Interval). There were no major deviations, and in some cases performance generally improved, during the relevant period. *See generally* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.4 (Reject Interval – Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.4 (Reject Interval – Mechanized, Resale). The most significant deviation was Alabama B.1.4.15 (Reject Interval – (continued....)

partially the result of the over-inclusion of certain LSR rejection notices, which were submitted when certain BellSouth legacy systems were out of service due to scheduled down time for OSS maintenance.[517] BellSouth claims, and we agree, that such LSRs should not be counted in the measurement. In June, BellSouth implemented a coding change in PMAP to ensure that scheduled OSS downtime was properly excluded, and BellSouth is not aware of any remaining problems.[518] AT&T also alleges that BellSouth, in calculating performance results for rejected mechanized LSRs, applies exclusions that are not documented in BellSouth's SQM or the Raw Data User Manual.[519] BellSouth, however, notes that these LSRs are included in the Total Mechanized LSRs category in the Flow-Through Report.[520] Accordingly, we do not find that BellSouth's performance warrants a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, however, we may pursue appropriate enforcement action.

150. Second, BellSouth demonstrates that it provides reject notices in a nondiscriminatory manner for those orders that require partial or full manual processing. Specifically, BellSouth met the benchmark for partially mechanized orders with only minor exceptions.[521] Moreover, BellSouth consistently met or exceeded the benchmark for returning

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Mechanized, Other Non-Design). However, as discussed below, BellSouth has explained that such deviations were due to the improper inclusion of certain LSR reject notices in the mechanized design and non-design reject intervals. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.4.14 (Reject Interval – Mechanized, Other Design); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.4.15 (Reject Interval – Mechanized, Other Non-Design); *see also* BellSouth Varner Reply Aff. at paras. 155-57.

[517] *See* BellSouth Varner Aff. at Exh. PM-2, paras. 39-44; BellSouth Varner Reply Aff. at para. 155; Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 1 (filed Aug. 20, 2002) (BellSouth August 20 *Ex Parte* Letter).

[518] *See* BellSouth Varner Reply Aff. at paras. 155-57. BellSouth has also explained that the fully mechanized reject interval was adversely affected when a FOC was followed by a manual clarification and the LSR erroneously appeared in both the fully mechanized FOC timeliness and reject interval measures. In this case, both a FOC and a separate reject are issued. *See id.* at para. 156. Because a service representative cannot claim the LSR after the FOC has been sent, the LSR is counted as fully mechanized and appears in both the FOC timeliness and reject interval metrics. *Id.* BellSouth also states that this problem overstates the time required for BellSouth's fully mechanized reject notice and, as a result, understates BellSouth's performance of the timeliness measure. BellSouth is currently working to develop a solution. *See* BellSouth August 15 Non-pricing *Ex Parte* Letter at 8. In addition, BellSouth states that there is also a LESOG application defect that affects the reject interval measure. Currently the indicator is not verified in the LESOG prior to the issuance of FOC. If the indicator is not populated on orders for additional lines, the order is manually clarified back to the competitive LEC. *See* BellSouth Varner Reply Aff. at para. 157.

[519] *See* AT&T Bursh/Norris Decl. at paras. 44-45.

[520] *See* BellSouth Varner Reply Aff. at para. 42; *see also* BellSouth August 14 OSS and Loops *Ex Parte* Letter at 5.

[521] Although BellSouth failed to meet the 85% within 10 hours benchmark for UNE and resale orders, for several of the submetrics in each of the states, we note that BellSouth's performance data show that it was generally close to the benchmark or order volumes were low. Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.7 (Reject Interval – Partially Mechanized); *see also* BellSouth Application at 82. Specifically, BellSouth's partially (continued….)

manually processed rejects.[522] Accordingly, we find that BellSouth's manual reject process can provide competing carriers prompt notice that an order has encountered a problem, and the opportunity to resolve it without considerable delay.

(iii) Order Flow-Through Rate

151. We conclude, as did the state commissions,[523] that BellSouth's OSS are capable of flowing through UNE orders in a manner that affords competing carriers a meaningful opportunity to compete.[524] We also conclude that BellSouth is capable of flowing through resale orders in substantially the same time and manner as it does for its own retail customers.[525] Consistent with our prior section 271 orders, we emphasize that we review flow-through rates as one of several factors to assess the BOC's overall ability to provide access to its ordering functions in a nondiscriminatory manner.[526] Accordingly, where other evidence demonstrates that the BOC's OSS are able to process competing carriers' orders at reasonably foreseeable

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mechanized reject interval (other non-design) was below the benchmark for one month in Alabama and one month in South Carolina. In Alabama, BellSouth's performance was almost 13 percentage points below the benchmark during that month and its average performance was over 91% for this measure. In South Carolina, BellSouth's performance was only 1.43 percentage points below the benchmark during that month and its average performance was over 93% for this measure. *See generally* Alabama/South Carolina B.1.7.3 (Reject Interval – Partially Mechanized – 10 hours, Loop + Port Combinations). BellSouth's partially mechanized reject interval (other design) performance data shows that BellSouth missed the benchmark for two months in Alabama, one month in Kentucky, and two months in Mississippi. These missed metrics, however, all have order volumes of ten or less. *See generally* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.7.14. BellSouth's partially mechanized reject interval (other non-design) was below the benchmark for one month in Alabama and two months in North Carolina. These missed metrics, however, were within seven percentage points of the benchmark. *See generally* Alabama/North Carolina B.1.7.15. (Reject Interval – Partially Mechanized – 10 hours, Non- Design). In addition, BellSouth's partially mechanized resale reject interval (business) performance data shows that it missed the benchmark in North Carolina in one month. This miss, however, was within four percentage points of the benchmark. *See generally* North Carolina A.1.7.2 (Reject Interval – Partially Mechanized – 10 hours, Business).

522 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.1.8 (Reject Interval - Non-Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.1.8 (Reject Interval – Non-Mechanized).

523 *See* Alabama Commission Comments at 155-61; Kentucky Commission Comments at 23; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 137-38; South Carolina Commission Comments at 1-3.

524 BellSouth's commercial data show, on the average, achieved flow-through levels, in the region for UNEs, of 74.11%. *See* F.1.2.5 (% Flow-Through Service Requests - Achieved, UNE). BellSouth's performance data for the percent flow-through service requests metric demonstrated an average monthly 83.69% total flow-through for UNEs in its region. *See* F.1.1.5 (% Flow-Through Service Requests, UNE).

525 *See* F.1.1.3 (% Flow-Through Service Requests, Residence); F.1.1.4 (% Flow-Through Service Requests, Business).

526 These factors include the BOC's ability to: (1) accurately process manually handled orders; (2) timely return order confirmations and reject notices; and (3) the overall scalability of its systems and processes. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9092-93, para. 143. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4034-35, paras. 161-63; *SWBT Texas Order*, 15 FCC Rcd at 18443-44, para. 179.

commercial volumes, it is not necessary to focus our analysis solely on flow-through rates.[527] BellSouth demonstrates that it provides timely order confirmation and reject notices for all orders. The evidence in the record also demonstrates that BellSouth accurately processes both manual and mechanized orders. Further, BellSouth's system is scalable to handle increased volumes.

152. We have previously stated that a BOC's ability to flow-through orders at high rates is dependent, in part, on the performance of competing carriers to place orders electronically.[528] We find it particularly informative that several competing carriers are achieving much higher flow-through rates than other carriers. Specifically, data regarding UNE orders shows that the flow-through rates of the top five competitive LECs range from 77.06 percent to 94.64 percent for the first quarter of 2002.[529] In addition, flow-through rates for three of these competitive LECs range from 90.19 percent to 94.64 percent during the first quarter.[530] During the second quarter of 2002, data regarding UNE orders shows that the flow-through rates of the top five competitive LECs range from 75.50 percent to 95.10 percent.[531] The flow-through rates for three of these competitive LECs range from 85.80 percent to 95.10 percent during the second quarter.[532] This evidence indicates that BellSouth's systems are capable of flowing through UNE orders in a manner that allows competitive carriers a meaningful opportunity to compete. In fact, BellSouth states that an analysis of the March Percent Flow-Through Service Requests (aggregate detail) report reveals that 246 users experienced flow-through rates in excess of 90 percent.[533] In June 2002, 277 users experienced flow-through rates in excess of 90 percent.[534] Because the record demonstrates that a number of competitive LECs experience high

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527 *See Bell Atlantic New York Order*, 15 FCC Rcd at 4034, para. 162 (stating that "[f]low through rates . . . are not so much an end in themselves, but rather are a tool used to indicate a wide range of possible differences in a BOC's OSS that may deny an efficient competitor a meaningful opportunity to compete.").

528 *See Bell Atlantic New York Order*, 15 FCC Rcd at 4038-39, para. 166; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9093, para. 145.

529 *See* BellSouth Stacy Aff. at para. 284.

530 *See id.*

531 BellSouth August 20 *Ex Parte* Letter at 2.

532 *Id.*

533 BellSouth Stacy Aff. at para. 285; BellSouth Application at 84. We note that BellSouth uses the term "user," instead of competitive LEC, when referring to a horizontal line of data represented on the Flow-Through Report, because each line of data represents an Operating Company Number (OCN) and some competitive LECs have multiple OCNs. Thus, on a flow-through report, two or more users may represent a competitive LEC's data. BellSouth Stacy Aff. at n.41. In addition, 39 of these users electronically submitted in excess of 1,000 LSRs and 80 users submitted between 100 and 999 LSRs. *See* BellSouth Application at 84; BellSouth Stacy Aff. at para. 285. In May 2002, 39 users that submitted more than 1,000 LSRs experienced flow-through rates of 90% or higher. *See* BellSouth Reply at 20; BellSouth Stacy Reply Aff. at paras. 151-52.

534 In addition, 47 of these users submitted in excess of 1,000 LSRs and 85 users submitted between 100 and 999 LSRs. *See* BellSouth August 20 *Ex Parte* Letter at 3.

flow-through rates, we conclude that it is inappropriate to attribute the wide range of flow-through results entirely to BellSouth.[535] As the Commission previously stated, a BOC is not accountable for orders that fail to flow through due to competing carrier-caused errors.[536] Our conclusion that BellSouth's OSS are capable of achieving high flow-through level is further bolstered by KPMG's Georgia testing.[537]

153. We note that we have previously determined that BellSouth's OSS are sufficiently scalable to handle reasonably foreseeable commercial volumes of orders in a nondiscriminatory manner.[538] Because BellSouth has demonstrated the ability to handle competitive LEC order volumes in a nondiscriminatory manner, even as order volumes increase, we are persuaded that BellSouth's OSS are sufficiently scalable to process increases in competitive LEC order volumes in the foreseeable future. As a result, in this application, flow-through performance has less value as an indicator of deficiencies in OSS.[539]

154. Although AT&T makes several claims regarding the manual nature of BellSouth's OSS,[540] we find that AT&T's concerns regarding BellSouth's flow-through performance are addressed by the record evidence, cited above, demonstrating that BellSouth is capable of flowing through competitive LEC orders.[541] Additionally, we note that BellSouth has

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535 Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

536 *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20674, para. 111; *Bell Atlantic New York Order*, 15 FCC Rcd at 4039-40, 4049, paras. 167, 181; *Verizon Massachusetts Order*, 16 FCC Rcd at 9030-31, para. 78.

537 The KPMG test evaluated the calculation of the flow-through percentages produced by BellSouth for competitive LEC activities for the months of September, October, and November 1999, and for the transactions of the test competitive LEC established by KPMG. The test utilized raw data to calculate flow-through and fallout statistics and compared the data used in thosecalculations to the data collected by KPMG. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9093, para. 145.

538 *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9097, para. 152.

539 Consistent with our prior section 271 orders, we do not review flow-through measures as an end in and of itself, but as one of several factors that we review to assess the BOC's overall ability to provide access to its ordering functions in a nondiscriminatory manner. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9092-93, para. 143; *Bell Atlantic New York Order*, 15 FCC Rcd at 4034-35, paras. 161-63; *SWBT Texas Order*, 15 FCC Rcd at 18443-44, para. 179.

540 AT&T Comments at 16; AT&T Bursh/Norris Decl. at paras. 77-81; AT&T Reply at 16-17. Specifically, AT&T contends that BellSouth's reliance on manual processing delays the processing of orders of competitive LEC customers and increases the risk of errors in provisioning. *See* AT&T Reply at 16-17

541 BellSouth states that between June 2001 and June 2002, its residential resale, business resale, and UNE flow-through performance has improved, and that its UNE-P flow-through has remained steady, despite a sharp increase in ordering volumes. *See* BellSouth Reply at 19; BellSouth Stacy Reply Aff. at paras. 112, 144-49. Although the regional LNP flow-through performance dropped slightly in June 2002, BellSouth explains that that is not a result of a deterioration of BellSouth's capabilities, but rather, stems from BellSouth's compliance with a Florida Commission order, requiring BellSouth to perform a facilities check before the issuance of a FOC. BellSouth Reply at 19; BellSouth Stacy Reply Aff. at paras. 114-15.

continued to participate in the Flow-Through Task Force established by the Georgia Commission to ensure continued compliance with the benchmarks and to develop flow-through enhancements.[542] BellSouth asserts that of the 35 issues identified by the Task Force, 31 have previously been addressed and the remaining 4 were addressed in release 10.6 during the weekend of August 24-25, 2002.[543] We also reject AT&T's claim that BellSouth erroneously calculates flow-through, since, as we already determined in the *BellSouth Georgia/Louisiana Order*, KPMG evaluated the calculation of the flow-through percentages produced by BellSouth for competitive LEC activities and found no such errors.[544] Moreover, we note that the Florida Commission recently ordered double SEEMS penalties if BellSouth does not meet its flow-through benchmarks.[545] AT&T, however, claims that the new penalties are inadequate and that the state commissions may not take the necessary actions to improve flow-through rates.[546] The alleged inadequacy of the Florida SEEMS penalties, however, is not decisional to our analysis of the current application. Accordingly, we do not find that AT&T's claims warrant a finding of checklist noncompliance.

155. Finally, Covad expresses concerns regarding the manual nature of BellSouth's OSS.[547] First, Covad contends that BellSouth improperly designs its systems so that orders fall out by design or cannot be ordered electronically.[548] Second, Covad asserts that a high portion of its orders submitted electronically are falling out to manual handling primarily due to BellSouth error.[549] We reject Covad's arguments. Rather, we find, as we did in *BellSouth Georgia/Louisiana Order*, that BellSouth properly designs its systems to minimize the number of orders that are processed manually.[550] Moreover, as of June 30, 2002, competitive LECs had only 636 UCL-ND in service region-wide.[551] Additionally, BellSouth states that it has completed

[542] *See* BellSouth Reply at 20; BellSouth Stacy Reply Aff. at para. 153.

[543] BellSouth Application at 85; BellSouth Stacy Aff. at paras. 286-87 & Exh. WNS-49; BellSouth Stacy Reply Aff. at para. 153; BellSouth August 20 *Ex Parte* Letter at 4; BellSouth September 9 *Ex Parte* Letter at 1. In addition, BellSouth's June 2002 data reflects the fact that it has recently implemented a number of coding changes to enhance flow-through. BellSouth Reply at 20; BellSouth Stacy Reply Aff. at paras. 15-52.

[544] KPMG evaluated the calculation of the flow-through in its Georgia test, utilized raw data to calculate flow-through and fall out statistics, and compared the data used in those calculators to the data collected by KPMG. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9093, para. 145.

[545] BellSouth Stacy Reply Aff. at paras. 138-43; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 4.

[546] AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 4.

[547] Covad Comments at 7-17.

[548] *Id.* at 9-10

[549] *Id.* at 10-11.

[550] *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9095, para. 149.

[551] BellSouth Stacy Reply Aff. at para. 214. LSRs for UCL-ND, according to BellSouth, represent only 0.34% of all manual LSRs submitted and 0.02% of all LSRs submitted. *See* BellSouth August 20 *Ex Parte* Letter at 4.

only nine orders for xDSL and only 525 orders for line sharing requiring loop conditioning for January though May region-wide.[552] Given the fact that the total number of these types of loops in each of the states is low,[553] and our finding in the *BellSouth Georgia/Louisiana Order* that a high percentage of loops can be ordered electronically, we cannot agree with Covad that BellSouth's ordering systems deny carriers a meaningful opportunity to compete.[554] Although not decisional to our analysis, BellSouth acknowledges that it does not currently offer electronic ordering of ADSL-compatible or Line Sharing loops with conditioning.[555] BellSouth, however, implemented electronic ordering of UCL-ND on August 24, 2002,[556] and will implement full flow-through of UCL-ND on December 7, 2002.[557]

(iv) Order Completion Notices

156. We conclude, as did the state commissions,[558] that BellSouth generally provides completion notices to competitive LECs in a nondiscriminatory manner. Based on the level of BellSouth's performance in the most recent months' performance data, we conclude that BellSouth provides completion notices in a manner that provides competitive LECs a meaningful opportunity to compete.[559] AT&T, however, alleges that 4,174 completion notices reflected in BellSouth's March 2002 Average Completion Notice Interval (ACNI) raw data file were not included in BellSouth's March 2002 Order Completion Interval (OCI) raw data files.[560] Although BellSouth was able to locate all of the orders identified by AT&T in the OCI raw data

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[552] BellSouth Stacy Reply Aff. at para. 215.

[553] For example, as of June 30, 2002, there were a total of 605 UCL-ND loops in service region-wide, with 26 in Alabama, 18 in Kentucky, 214 in Mississippi, 80 in North Carolina, and zero in South Carolina. *See* BellSouth August 14 *Ex Parte* OSS and Loops Letter at 2-3.

[554] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9096, para. 150. In addition, BellSouth has participated in numerous collaborative sessions to discuss possible solutions to Covad's requests. *See* BellSouth Stacy Reply Aff. at paras. 220-21.

[555] BellSouth Stacy Reply Aff. at para. 220.

[556] BellSouth September 9 *Ex Parte* Letter at 1.

[557] BellSouth Stacy Reply Aff. at para. 220

[558] *See* Alabama Commission Comments at 153, Kentucky Commission Comments at 23-24; Mississippi Commission Comments at 11-12; North Carolina Commission Comment at 140-41; South Carolina Commission Comments at 1-3.

[559] There were only minor disparities in BellSouth's performance. These disparities were generally between 0.12% and 0.32%. *See* North Carolina B.2.21.3.1.2 (Average Completion Notice Interval – Mechanized, Loop + Port Combinations/<10 Circuits/Non-Dispatch); Alabama/North Carolina/South Carolina B.2.21.3.1.4 (Average Completion Notice Interval – Mechanized, Loop + Port Combinations/<10 Circuits/Dispatch). Thus, these misses are not indicative of a persistent problem. *See* BellSouth Application at 87-88; BellSouth Varner Aff. at Exhs. PM-2 – PM-5, para. 53.

[560] *See* AT&T Bursh/Norris Decl. at para. 39; AT&T August 23 OSS and Data Integrity *Ex Parte* Letter at 6.

file, BellSouth identified a defect that caused incomplete OCI raw data files to be downloaded from the PMAP website. BellSouth states, however, that this problem only occurred in March and had no effect on performance data.[561] Given this evidence, and recognizing that BellSouth met or exceeded parity with the relevant retail analogue with only minor disparities during the relevant period, we do not find that AT&T's claims warrants a finding of checklist noncompliance. Finally, we note that this defect has been corrected and BellSouth provided AT&T with a complete March 2002 OCI raw data file in July 2002.[562] Should we later find evidence to the contrary, however, we may pursue appropriate enforcement action.

157. AT&T also contends that the multiple fix dates which BellSouth has provided for the ACNI are confusing when orders are completed in one month, but the completion notice is issued in another.[563] BellSouth states that this AT&T concern refers to another enhancement from a Tennessee discovery request that BellSouth originally indicated would be implemented in July.[564] We do not address this issue because the Tennessee discovery request is not relevant to the five states under review in this application. Therefore, we do not find that these allegations warrant a finding of checklist noncompliance.

(v) **Jeopardy Notices**

158. We conclude, as did the state commissions,[565] that BellSouth provides jeopardy notices to competitive LECs on a nondiscriminatory basis.[566] Based on the level of BellSouth's performance in the most recent months' performance data, we conclude that BellSouth provides jeopardy notices in a manner that provides competitive LECs a meaningful opportunity to compete.[567] AT&T, however, alleges that BellSouth unilaterally excludes jeopardy notices from its reporting for those orders that fall into jeopardy status in one month but receive a notice in the

561 *See* BellSouth Varner Reply Aff. at para. 33. BellSouth explains that all orders were correct as stated and that all orders completed in March 2002 were included in the measurement. *See* BellSouth August 20 *Ex Parte* Letter at 4. In addition, BellSouth states that specific service representatives within its Work Management Centers have been assigned to resolve any completion issues that required attention. *See* BellSouth Application at 88.

562 *See* BellSouth Varner Reply Aff. at para. 33

563 *See* AT&T Bursh/Norris Decl. at para. 43.

564 *See* BellSouth Varner Reply Aff. at para. 41. This change, however, has yet to be scheduled and BellSouth has amended its Tennessee discovery request accordingly.

565 *See* Alabama Commission Comments at 162; Kentucky Commission Comments at 23-24; Mississippi Commission Comments at 11-12; North Carolina Commission Comment at 138; South Carolina Commission Comments at 1-3.

566 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.8 (Average Jeopardy Notice Interval - Mechanized); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.9 (Average Jeopardy Notice Interval - Non-Mechanized). *See also* BellSouth Varner Aff. at Exh. PM-2, para. 55.

567 *See* BellSouth Application at 88-89; BellSouth Varner Aff. at Exh. PM-2, para. 55.

next month, causing inaccurate data.[568] BellSouth explains that in a very small number of cases, if a jeopardy notice is issued in a different month than the due date, the order cannot be counted in this measure.[569] BellSouth adds that the average jeopardy notice interval was not relied upon until March 2002, and that this issue was corrected with April 2002 data.[570] With its April 2002 data, under PMAP 4.0, BellSouth states that jeopardy notices associated with such orders are reflected in the data for the month in which the due date occurs.[571] Given this evidence, and recognizing that BellSouth met or exceeded parity with the relevant retail analogue for all relevant submetrics with data reported, we do not find that AT&T's claims warrant a finding of checklist noncompliance. Should we later find evidence to the contrary, however, we may pursue appropriate enforcement action.

(vi) Service Order Accuracy

159. We find, as did the state commissions,[572] that BellSouth accurately processes manual and electronic orders. We reject AT&T's claims concerning BellSouth's ability to accurately process manual and electronic orders.[573] Although BellSouth failed to meet the benchmarks for several months during the relevant period, we do not find that this performance warrants a finding of checklist noncompliance.[574] We find that these missed benchmarks are exceptions to BellSouth's performance and not indicative of a downward trend. BellSouth also explains that it continues to dedicate additional resources in its local carrier service center (LCSC) to review live orders to ensure accuracy in the provisioning of competitive LEC orders.

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568 *See* AT&T Bursh/Norris Decl. at paras. 57-58.

569 *See* BellSouth Varner Reply Aff. at para. 50.

570 *Id.*

571 *See* BellSouth August 20 *Ex Parte* Letter at 5. BellSouth explains, that prior to the implementation of PMAP 4.0, in April 2002, if an order went to jeopardy status in one month and had a due date in a subsequent month, PMAP did not have the beginning timestamp when it attempted to calculate the interval in the month of the due date. *Id.* As a result, the notice was not reflected in either month. BellSouth also notes that this situation occurred very infrequently. *Id.*

572 *See* Alabama Commission Comments at 163; Kentucky Commission Comments at 21; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 133-34; South Carolina Commission Comments at 1-3.

573 Specifically, AT&T contends that BellSouth's reported service order accuracy rates have frequently missed the applicable benchmarks in recent months, particularly for resale orders. *See* AT&T Comments at 16.

574 *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.34 (UNE Service Order Accuracy – Regional); Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.2.25 (Resale Service Order Accuracy – Regional). Specifically, BellSouth's regional UNE service order accuracy measures were 89.91% in April; 67.07% in May; and ranged from 69.33% to 90.9% in June. There were no misses in March. In addition, BellSouth's regional resale service order accuracy measures ranged from 84.62% to 93.85% in March; 77.78% to 94.29% in April; 77.78% to 92.59% in May; and 76.9% to 94.4% in June. We find, nevertheless, that BellSouth's performance is within the range of what we approved in the *BellSouth Georgia/Louisiana Order*. *See* BellSouth Reply at 22; BellSouth Stacy Reply Aff. at para. 122.

BellSouth has also developed corrective action plans for any service representatives that are not meeting their requirements.[575] Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

160. AT&T states that the service order accuracy data submitted by BellSouth in its July 23, 2002 *ex parte* letter are unreliable due to inconsistencies with BellSouth's reported data.[576] According to BellSouth, however, AT&T quoted figures from the wrong MSS.[577] BellSouth also states that a reason for the difference between completed service orders as shown on the MSS and the population tabulated in the service order accuracy report is due to several large conversions in UNE-P in Georgia and Florida that were completed during this period.[578] Nevertheless, BellSouth maintains that the number of orders that BellSouth evaluated is more than sufficient to assess performance.[579] Additionally, BellSouth states that AT&T miscalculated the accuracy rate for the non-mechanized resale residence submetric,[580] without regard for the fact that the accuracy rate varies for each disaggregation.[581] Accordingly, given this evidence, we do not find that these allegations warrant a finding of checklist noncompliance.

(vii) Other Ordering Issues

161. *DSL USOC.* We reject claims that BellSouth has created a significant impediment to ordering UNE-P by placing erroneous DSL universal service order codes (USOCs) on the CSR in an effort to delay competitors' orders.[582] Specifically, Birch argues that BellSouth "virtually crams" a customer's CSR with the DSL USOC, and that BellSouth's

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575 BellSouth Varner Reply Aff. at para. 181. BellSouth notes that it inadvertently reversed the labels for the mechanized and non-mechanized data. Despite this error, BellSouth states that AT&T listed the correct data in its filing. *See id.* at para. 58; BellSouth August 20 *Ex Parte* Letter at 5-6.

576 AT&T Comments at 16; AT&T Bradbury/Norris Decl. at paras. 97-98; AT&T Reply at 17; AT&T Bursh/Norris Decl. at paras. 82-87. For example, AT&T claims that the universe of completed service orders in the *ex parte* appears to be grossly understated. *See* AT&T Reply at 17. AT&T claims that the total number of completed service orders is inconsistent with BellSouth's MSS report listing such orders for the same time frame. *Id.*

577 *See* BellSouth Varner Reply Aff. at para. 56.

578 *See id.*

579 *Id.*

580 *See* BellSouth August 20 *Ex Parte* Letter at 6.

581 *See* BellSouth Varner Reply Aff. at para. 53. BellSouth explains that that the accuracy rate for this submetric is the average accuracy rate for the four product dissagregations that compose the submetric. *See* BellSouth August 20 *Ex Parte* Letter at 6

582 Birch Comments at 4-13, Attach. 1.

interim process[583] for removing DSL USOCs is inefficient and delays conversions.[584] KMC and NuVox claim that BellSouth requires that its USOC for DSL service be removed from an end user's retail account prior to acceptance of a competitive LEC's order.[585] In addition, commenters contend that BellSouth's representation regarding the actual impact of the DSL USOC issue is flawed and that erroneous DSL USOCs are subtle ways for BellSouth to prevent competitors from ever providing local service on par with BellSouth.[586]

162. Consistent with the *BellSouth Georgia/Louisiana Order*, we find that the DSL USOC issue affects a small amount of orders, and commenters have not submitted evidence of a systemic problem.[587] Indeed, BellSouth demonstrates that 0.17 percent of total UNE-P conversions for the month of May were affected by the DSL USOC.[588] Further, we note that some DSL USOC problems may be the result of delays in canceling old DSL accounts or installing new DSL accounts.[589] Moreover, there is no evidence in the record, beyond Birch's

[583] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9102 n.571. This process provides a competitive LEC (after receiving notice of the USOC) the option to call a dedicated group at BellSouth's LCSC to remove the DSL USOC if the end user is not receiving DSL.

[584] In addition, Birch requests that BellSouth allocate resources to implement an effective process to remove DSL USOC that already exist on customer accounts, and immediately rectify the current process failures by taking emergency corrective action to implement a systemic fix prior to BellSouth's Release 11.0 scheduled for December 7, 2002. Birch Comments at 5-6.

[585] KMC/NuVox Comments at 20.

[586] Birch Comments at 9; US LEC Reply at 4 (citing Birch Comments at 4-13).

[587] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9101, para. 158.

[588] *See* BellSouth Ainsworth Reply Aff. para. 22. In May 2002, 2,791 LSRs were auto-clarified for DSL service on the end-users line –which equates to just over 4% of the total orders auto-clarified and less than 2.27% of UNE-P conversions. *Id.* BellSouth indicates that of the 2,791 DSL-clarified orders, only 204 were auto-clarified for DSL service on the end-user's line when the end-user either did not have working high speed Internet access service, or was actively involved in adding or disconnecting the DSL service, which equates to 0.17% of total UNE-P conversions for the month of May 2002. *Id.* Similarly, we observed in the *BellSouth Georgia/Louisiana Order* that, in February 2002, 0.37% of all UNE-P conversions involved instances where the end-user was actively adding or disconnecting DSL service, or did not have working DSL. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9101-02 n.569. We are not persuaded by Birch's argument that BellSouth's percentages, which are based on auto-clarifications, do not accurately reflect the true universe of orders that are affected during conversion to a competitive LEC. *See* Letter from Rose Mulvany Henry, Director of Regulatory & Regulatory Counsel, Birch, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 2 (filed August 23, 2002) (Birch August 23 *Ex Parte* Letter). BellSouth indicates that the DSL USOC clarifications represent the number of migration requests BellSouth receives related to DSL on the migrating customer's CSR. *See* BellSouth Application App. A, Vol 1A, Tab A, Affidavit of Ken L. Ainsworth (BellSouth Ainsworth Aff.) at para. 19. BellSouth states that Birch's argument that BellSouth's data does not include any DSL removal request by a competitive LEC prior to submission of a migration request is true, but BellSouth points out that competitive LECs can request removal of DSL prior to submission of a migration request or request removal of the DSL utilizing the interim process by acting on the end-users' behalf. BellSouth states that the clarification data is representative of the working and non-working DSL USOCs that are posted on the CSR. *Id.*

[589] *See* BellSouth Ainsworth Reply Aff. at paras. 14-15.

mere assertion, to suggest that BellSouth intentionally causes this problem.[590] In fact, BellSouth has recognized the DSL USOC problem and is currently working with competitive LECs through an interim process it created in the BellSouth Georgia/Louisiana proceeding to quickly handle orders affected by this problem. Moreover, BellSouth notes that since it instituted this interim process, only 99 requests per month have been received among all five application states.[591] We therefore find that there is no evidence in the record that BellSouth acts in a discriminatory manner or denies competitors a reasonable opportunity to compete. Although not decisional to our evaluation, we also note that BellSouth will provide competitive LECs the ability to electronically request removal of DSL from UNE-P migration orders with its December 8, 2002 system release.[592]

163. We also reject other claims by commenters that BellSouth has a policy of placing DSL on the customer's primary telephone line or the billing telephone line of a hunt group and that this policy is discriminatory.[593] BellSouth states that it does not have a policy of placing DSL on the customer's primary line or the billing line of a hunt group.[594] Rather, as we noted in the *BellSouth Georgia/Louisiana Order*, BellSouth's policy permits the end user to place DSL service on whichever line the customer requests.[595] We also note that Birch also requests that the Commission pursue enforcement action against BellSouth in Georgia and Louisiana for withholding relevant data from the Commission regarding the pervasiveness of the problem.[596] We believe that this issue is more appropriately raised in an enforcement proceeding under section 271(d)(6) of the Act, rather than here.[597]

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[590] Birch has submitted several customer-specific examples of customers who have had the USOC DSL placed on their accounts to illustrate the pervasiveness of the problem. BellSouth, however, explains that all of Birch's examples, for which there was sufficient information to investigate, are scenarios where the DSL USOC was placed on the CSR as a result of an order from an ISP. BellSouth Ainsworth Reply Aff. at para. 15. Birch points out that for the vast majority of the examples, the orders were placed by an ISP, but it was BellSouth's retail DSL service unit. Birch August 23 *Ex Parte* Letter at 2. We find, however, that there is no evidence on the record that BellSouth or its retail DSL service unit crams its customers' accounts with the DSL USOC.

[591] *See* BellSouth Ainsworth Reply Aff. at para. 26.

[592] *See id.* at para. 20.

[593] Birch Comments at 13; KMC/NuVox Comments at 10, 17-19.

[594] *See* BellSouth Ainsworth Reply Aff. at para. 30.

[595] *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9101 n.565; BellSouth Ainsworth Reply Aff. at para. 30. BellSouth states that if the telephone number provided by the customer qualifies for DSL, then the sales agent is instructed to place the DSL order on the line requested by the customer, and if the first choice does not currently qualify for DSL service the agent will usually recommend provisioning the DSL service on the customer's fax line. BellSouth Ainsworth Reply Aff. at para. 30

[596] Birch Comments at 5.

[597] *See* 47 U.S.C. § 271(d)(6); 47 U.S.C. § 208.

164. Finally, we reject claims by KMC and NuVox that BellSouth's practice of refusing to provide DSL service on the same line over which an end user subscribes to a competitive LEC's voice service warrants a finding of noncompliance. As we stated in the *BellSouth Georgia/Louisiana Order*, an incumbent LEC has no obligation, under our rules, to provide DSL service over the competitive LEC's leased facilities. Moreover, a UNE-P carrier has the right to engage in line splitting on its loop.[598] As a result, a UNE-P carrier can compete with BellSouth's combined voice and data offering on the same loop by providing the customer with line splitting voice and data service over the UNE-P loop in the same manner.[599] Accordingly, we cannot agree with KMC and NuVox that BellSouth's policies are discriminatory and warrant a finding of checklist noncompliance.

165. *Ordering for Line-Shared Loops.* Covad claims that two specific defects in BellSouth's ordering processes for line-shared loops allow BellSouth to achieve a greater level of flow-through mechanization than competitive LECs are able to achieve.[600] First, Covad asserts that BellSouth's automated systems are unable to provide Covad with "pseudo circuit numbers" when it orders line-shared loops.[601] Covad states that it needs these numbers to identify the line-shared loops for which it is being charged and that BellSouth's systems force it to use a manual work-around to obtain them.[602] Even assuming that competitive LECs ordered all of these line-shared loops manually,[603] a point on which neither Covad nor BellSouth was able to elucidate further in this proceeding, we do not have sufficient evidence in the record to

[598] *Line Sharing Order*, 14 FCC Rcd at 20912; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration, CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking, CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 16 FCC Rcd 2101, 2109-14, paras. 14-26 (*Line Sharing Reconsideration Order*); *see also SWBT Texas Order*, 15 FCC Rcd at 18517-18, para. 330.

[599] *SWBT Texas Order*, 15 FCC Rcd at 18517-18, para. 330.

[600] Covad Comments at 14-15.

[601] *Id.* at 14. "Pseudo circuit numbers" are numbers that BellSouth uses in its bills to identify the line-shared loops for which competitive LECs are being charged. *Id.* at 14.

[602] *Id.* at 14-15. This manual work-around requires that a competitive LEC stop the automated ordering process and manually extract the pseudo circuit number from a BellSouth database before manually completing and closing an order. Covad Comments at 14-15. The record shows, however, that competitive LECs ordered from BellSouth only 165 line-shared loops in Alabama, 137 line-shared loops in Kentucky, 78 line-shared loops in North Carolina, and no line-shared loops in either Mississippi or South Carolina during the applicable four-month period. Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.2.1.7.3.1-B.2.1.7.4.2 (Order Completion Interval, Line Sharing).

[603] The record contains no data on either the number of line-shared loops that competitive LECs ordered manually during the applicable period or the number of line-shared loops that were ordered manually as a result of this "pseudo circuit number" problem. We note that BellSouth argues that Covad need interrupt the mechanized ordering process in order to obtain a "pseudo circuit number." BellSouth August 20 *Ex Parte* Letter at 2. Instead, according to BellSouth, Covad could complete an order for line-shared loop mechanically and, at a later date, use a manual process to obtain the "pseudo circuit number." *Id.* BellSouth contends that this alternative work-around would take a competitive LEC service representative less than five minutes. *Id.*

determine whether the additional costs and delays that manually ordering these loops impose on competitive LECs would be competitively significant.[604] We therefore conclude that BellSouth's inability to provide pseudo circuit numbers mechanically does not warrant a finding of noncompliance with checklist item 2. Although not a basis for our decision here, we note that BellSouth acknowledges that this inability is a defect and will correct this problem its OSS 11.0 release targeted for December 8, 2002[605]

166. Covad also states that BellSouth creates two separate orders when it receives a line-shared loop order from a competitive LEC: one that goes to BellSouth's billing department; and another that goes to the central office from which the line-shared loop will be provisioned.[606] Covad states that BellSouth generally completes the billing order in about 24 hours, but takes longer to complete the loop provisioning order.[607] Covad complains that it cannot modify the provisioning order to request changes, such as loop conditioning, once BellSouth completes the billing order.[608] Instead, Covad must cancel its initial order, wait for BellSouth to process that cancellation, and then submit a new order requesting conditioning.[609] Covad contends that this process is considerably more expensive and time-consuming than simply modifying the initial order and that BellSouth's retail operations never encounter similar burdens under similar circumstances.[610] BellSouth acknowledges this defect, but claims that it rarely affects competitive LEC orders. Indeed, BellSouth states that this defect affects a competitive LEC only when each of the following occurs: (1) the bill and provisioning order due dates fall out of synchrony as a result of changes in the due dates; (2) the billing order erroneously completes before the provisioning work is completed; and (3) the loop makeup data contained in LFACS do not reflect loop conditions (such as excessive bridged taps or load coils) that are incompatible with line sharing and are discovered at the time of provisioning. We recognize the inconvenience that this may cause Covad, but find that Covad's allegations do not indicate systemic problems with BellSouth's ordering processes. Given the small number of orders affected at this time, we do not believe that the minor additional costs and delays that this problem imposes on competitive LECs are competitively significant. Although not a basis for our evaluation here, we note that BellSouth will implement a change scheduled for completion

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604 We note that Covad has not attempted to quantify the additional costs or delays of ordering a line-shared loop manually, rather than mechanically.

605 BellSouth Stacy Reply Aff. at paras. 225-27; *see also* Letter from Praveen Goyal, Senior Counsel – Government & Regulatory Affairs, Covad, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 Att. A-1A at 4 (filed July 23, 2002) (Covad July 23 *Ex Parte* Letter).

606 Covad Comments at 15.

607 *Id.* at 16.

608 *Id.* at 16-17.

609 *Id.*

610 *Id.*

that will be included in BellSouth's OSS 11.0 release targeted for December 8, 2002 to correct this problem.[611]

167. Covad also contends that BellSouth begins billing Covad immediately upon completion of the billing order and that Covad should not have to pay for a line-shared loop until it is installed.[612] Such allegations concern us; however, in this case there is little supporting evidence to substantiate them. Even if true, moreover, the record shows that any early billing would cost Covad only about $0.02 per line-shared loop per day.[613] Because that amount may be too low to be competitively significant and because BellSouth offers to refund any excess charges to Covad,[614] we find that Covad's allegation of premature billing does not warrant a finding of checklist noncompliance.

168. *Dial Around Compensation.* We reject Ernest's claim that BellSouth fails to provide nondiscriminatory access to its OSS.[615] Ernest claims that without FLEX ANI on a payphone line, a "long-distance" call cannot be identified as originating from a payphone and a payphone service provider cannot collect dial-around compensation for calls made from that line.[616] Ernest states that after examining its orders, it discovered that the payphone USOC that was ordered properly from BellSouth was being charged to a business line USOC by BellSouth's OSS, which does not include FLEX ANI.[617] While we recognize the inconvenience that this may cause Ernest and its customers, BellSouth acknowledges this problem and states that it offered Ernest an interim manual solution to fully resolve this problem.[618] Despite an interim solution in place, BellSouth claims that Ernest continues to submit orders electronically, knowing that this will result in errors that will need to be corrected.[619] Given this evidence, we do not find that Ernest's claim warrants a finding of checklist noncompliance. Although not decisional to our analysis, we also note that BellSouth has committed to implement a permanent network solution to this problem on December 8, 2002.[620] Should this issue prove to be a systemic problem with

[611] BellSouth Application Reply App., Vol 2, Tab G, Reply Affidavit of David P. Scollard (BellSouth Scollard Reply Aff.) at para. 16. Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

[612] Covad Comments at 16.

[613] *See* BellSouth Stacy Reply Aff. at para. 15.

[614] *See id.* at para. 15.

[615] Ernest Comments at 4.

[616] *Id.* at Affidavit of Steve Reynolds (Ernest Reynolds Aff.) at para. 4.

[617] Ernest Reynolds Aff. at para. 7.

[618] BellSouth Application Reply App., Vol. 2, Tab C, Reply Affidavit of Trent Lamar Clark (BellSouth Clark Reply Aff.) at para. 5; BellSouth Stacy Reply Aff. at para. 200.

[619] BellSouth Clark Reply Aff. at para. 5

[620] BellSouth Reply at 27; BellSouth Stacy Reply Aff. at para. 204.

BellSouth's OSS, or should the scheduled December fix prove to cause carriers competitive harm, the Commission may take appropriate enforcement action.

d. Provisioning

169. Based on the evidence in the record, we find, as did the state commissions,[621] that BellSouth provisions competitive LEC customers' orders for UNE-platform and resale services "in substantially the same time and manner as it provisions orders for its own retail customers."[622] Overall, BellSouth's performance meets the parity standards in key metrics that measure provisioning for resale and UNE-platform in all five states from March to June.[623]

170. Based on the results of BellSouth's performance data, we find that BellSouth generally meets the parity standard with respect to provisioning timeliness and provisioning quality for both resale and UNE-P.[624] Although we note some exceptions with respect to BellSouth's order completion interval metric, the disparities are isolated to a few submetrics with low volumes and are not competitively significant.[625] Similarly, BellSouth's inability to meet the

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621 *See* Alabama Commission Comments at 163; Kentucky Commission Comments at 21-29; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 139-41; South Carolina Commission Comments at 1-3.

622 The systems, procedures and personnel used by BellSouth to offer access to provisioning timeliness and quality are the same in Georgia and Louisiana as in the five states contained in this application. BellSouth Application at 90; *see also BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9108-09, para. 166.

623 *See generally* BellSouth Varner Aff. at para. 182, Exhs. PM-2 – PM-6.

624 In all five states, BellSouth met or exceeded parity with the retail analogue for the resale order completion interval performance metric for all residential orders, which account for the vast majority of resale orders, and for the order completion interval for UNE-P. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.2.1.1.1.1 – A.2.1.1.2.2 (Order Completion Interval, Residence); Alabama/Kentucky/ Mississippi/North Carolina/South Carolina B.2.1.3.1.1 – B.2.1.3.2.4 (Order Completion Interval, Loop + Port Combinations).

625 *See* North Carolina A.2.1.2.1.1 (Order Completion Interval, Business/<10 Circuits/Dispatch). BellSouth explains that for two of the months in which it missed the parity standard, the difference between the BellSouth and competitive LEC intervals can be attributed to a handful of orders in each month with extended intervals. BellSouth Varner Aff. at para. 202, Exh. PM-5; *see also* Varner Reply Aff. at para. 173. Each of those orders was either initially scheduled with an extended interval at the customer's request or was changed based on a missed appointment caused by the end user customer and had to be rescheduled. Varner Reply Aff. at para. 173. BellSouth has also failed to meet the parity standard for metric B.2.1.4.1.1. (Order Completion Interval, Combo Other/<10 Circuits/Dispatch) for March through June in Kentucky, for March through June in North Carolina, and for April through June in South Carolina. Competitive LEC volumes – fewer than 20 orders in any given month in Kentucky, fewer than 15 in North Carolina, and fewer than 40 in South Carolina – are not substantial enough, however, to warrant a finding of checklist noncompliance in light of BellSouth's overall performance. Furthermore, as we noted in the *BellSouth Georgia/Louisiana Order*, BellSouth has reached an agreement with competitive LECs to create a separate disaggregated metric for EELs, which should facilitate the detection of any future poor performance. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9019, para. 166. Once this metric is established for EELs, we expect that BellSouth's performance should improve. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9019, para. 166. Should BellSouth's performance in this area deteriorate, we may pursue appropriate enforcement action.

parity standard for missed installation appointments for a few submetrics lacks competitive significance.[626] Moreover, BellSouth demonstrates that it has met an average of at least 99 percent of installation appointments, and the disparity between the retail and wholesale performance is extremely small.[627] As such, the competitive LECs' ability to compete has not been hindered by BellSouth's failure to meet these submetrics. Finally, BellSouth missed several submetrics for the metric measuring percent provisioning troubles within 30 days for both resale and UNE-platform.[628] However, the disparity between BellSouth retail and competitive LEC performance is small for those submetrics with high volumes.[629] Furthermore, BellSouth claims that "a significant number" of its trouble reports for specific submetrics were closed without a trouble being found.[630] If those reports were excluded from the performance results, BellSouth would have met the parity standard.[631] Nonetheless, we will monitor BellSouth's performance in this area, and, should it deteriorate, we will pursue appropriate enforcement action.

171. We reject WorldCom's complaint that the Commission has not had enough time to properly evaluate BellSouth's implementation of Single "C" ordering in each of the five

[626] The exception to BellSouth's generally timely installations is metric A.2.11.1.1.2 (% Missed Installation Appointments, Residence/< 10 Circuits/Dispatch) for resale in Alabama, Mississippi, North Carolina, and South Carolina. BellSouth Varner Reply Aff. at para. 230. BellSouth has also missed two UNE-platform metrics: B.2.18.3.1.2 (% Missed Installation Appointments, Loop + Port Combination/< 10 Circuits/Non-dispatch) and B.2.18.3.1.4 (% Missed Installation Appointments, Loop + Port Combinations/< 10 Circuits/Dispatch In) in the five states.

[627] BellSouth Varner Reply Aff. at para. 230. For those submetrics not at parity for more than one month, only one submetric has higher than a 0.5% average rate of missed appointments: B.2.18.3.1.4 for North Carolina is 0.56%. In addition, the disparity between the retail and wholesale performance is extremely small. BellSouth Varner Reply Aff. at para. 192.

[628] *See* Alabama/Mississippi/North Carolina A.2.12.1.1.2 (% Provisioning Troubles Within 30 Days, Residence/<10 Circuits/Non-dispatch); Mississippi A.2.12.4.1.2 (PBX/<10 Circuits/Non-dispatch); Mississippi A.2.12.5.1.2 (% Provisioning Troubles Within 30 Days, Centrex/<10 Circuits/Non-dispatch); North Carolina B.2.19.3.1.1 (% Provisioning Troubles Within 30 Days, Loop + Port Combination/< 10 Circuits/Dispatch); Alabama/North Carolina/South Carolina B.2.19.3.1.2 (% Provisioning Troubles Within 30 Days, Loop + Port Combination/< 10 Circuits/Non-dispatch); North Carolina B.2.19.3.1.3 (% Provisioning Troubles Within 30 Days, Loop + Port Combination/< 10 Circuits/Switch-based); Alabama/Mississippi/North Carolina/South Carolina B.2.19.3.1.4 (% Provisioning Troubles Within 30 Days, Loop + Port Combination/< 10 Circuits/Dispatch In).

[629] *See, e.g.*, Alabama/Mississippi A.2.12.1.1.2 and Mississippi B.2.19.3.1.4 (less than 1% difference between BellSouth retail and wholesale performance); Alabama/South Carolina/North Carolina B.2.19.3.1.2 and B.2.19.3.1.4 (approximately or less than 1.5% difference between BellSouth retail and wholesale performance).

[630] BellSouth Varner Aff. Exh. PM-2 at paras. 58, 196 (Alabama); BellSouth Varner Aff. Exh. PM-4 at paras. 58, 190 (Mississippi) (a "significant number" of the troubles reported were closed as "no trouble found"); BellSouth Varner Aff. Exh. PM-5 at paras. 58, 206 (North Carolina) (more than 20% of the troubles reported were closed as "no trouble found"); BellSouth Varner Aff. Exh. PM-6 at paras. 58, 188 (South Carolina).

[631] *Id.*

states.[632] We do not rely on enhancements to BellSouth's provisioning process, specifically the implementation of Single "C" ordering, in determining checklist compliance. We note, however, that BellSouth has now implemented Single "C" ordering in each of the states,[633] and we expect BellSouth to take the necessary steps to cure any problems associated with the implementation of Single "C" ordering.

e. Maintenance and Repair

172. We find, as did the state commissions, that BellSouth provides nondiscriminatory access to its maintenance and repair OSS functions for resale and UNE-platform.[634] Moreover, commercial data during the relevant period show competing carriers have access to these functions "in substantially the same time and manner"[635] as BellSouth's retail operations, and with an equivalent level of quality.[636]

173. Although we note slightly higher trouble report rates in the Design, PBX and ISDN product categories for resale measures,[637] the percentage of troubles appears to be low in

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[632] WorldCom asserts that it has experienced line loss problems and that it is attempting to determine the extent of the problems and whether they are related to the Single "C" implementation. Lichtenberg Decl. at para. 24; WorldCom Reply at 7.

[633] BellSouth Ainsworth Reply Aff. at para. 8; BellSouth Stacy Reply Aff. at para. 192. BellSouth implemented Single "C" ordering in Mississippi on March 23, 2002, in Alabama and South Carolina on July 21, 2002, and in North Carolina and Kentucky on August 3, 2002. Single "C" was previously implemented in Florida, Georgia, Louisiana, and Mississippi. BellSouth Stacy Reply Aff. at para. 192.

[634] *See* Alabama Commission Comments at 165; Kentucky Commission Comments at 26; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 142; South Carolina Commission Comments at 1-3.

[635] First, customers of competitive LECs were out of service for less time than BellSouth customers. BellSouth provided competing carriers better than parity performance in the Percentage Out of Service metric, with a few *de minimis* exceptions, for both resale and UNE-platform. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.3.5 and B.3.5 (% Out of Service More Than 24 Hours). Second, the performance data indicate that BellSouth provides better than parity service in meeting repair appointments. BellSouth provided better than parity performance across all product categories in resale and across UNE-P and other combination categories, with a few *de minimis* exceptions. *See* Alabama/Kentucky/Mississippi/North Carolina/South Carolina A.3.1 and B.3.1 (% Missed Repair Appointments). Finally, BellSouth performed repair work faster for competing carriers than it did for its own customers. BellSouth met or exceeded the parity standard as compared to the retail analog for the "Maintenance Average Duration" metric, except for a few *de minimis* exceptions. *See* Alabama/Kentucky/ Mississippi/North Carolina/South Carolina A.3.3; Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.3.3 (Maintenance Average Duration).

[636] BellSouth provided better than parity performance for repair quality across all product categories in resale and across UNE-P and other combination categories, with a few *de minimis* exceptions. *See* Alabama/Kentucky/ Mississippi/North Carolina/South Carolina A.3.4 (% Repeat Troubles within 30 Days); Alabama/Kentucky/ Mississippi/North Carolina/South Carolina B.3.4 (% Repeat Troubles within 30 Days).

[637] BellSouth was out of parity for at least three months for the following metrics: A.3.2.3.1 (Customer Trouble Report Rate, Design/Dispatch) in Mississippi; A.3.2.4.1 (Customer Trouble Report Rate, PBX/Dispatch) in (continued....)

nearly every case.[638] Similarly, BellSouth's failure to achieve parity for metric for "Combinations, Other/Dispatch" in North Carolina for two months and in South Carolina for three months during the relevant period,[639] is not competitively significant.[640] Accordingly, BellSouth's performance with regard to this metric does not warrant a finding of noncompliance.

f. Billing

174. Like the state commissions, we find that BellSouth provides nondiscriminatory access to its billing functions.[641] BellSouth's performance data demonstrate its ability, with a few exceptions, to provide competing carriers with billing usage information in substantially the same time and manner that BellSouth provides such information to itself,[642] and to provide wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.[643] For invoice accuracy – both resale and UNE bills – BellSouth did not meet the parity

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Alabama, Kentucky and Mississippi; A.3.2.4.2 (Customer Trouble Report Rate, PBX/Non-dispatch) in Mississippi; and A.3.2.6.1 (Customer Trouble Report Rate, ISDN/Dispatch) in Alabama, North Carolina and South Carolina. BellSouth notes that it is providing more than 97% trouble-free lines in most cases, and that these submetrics are sensitive to small performance differences. BellSouth Varner Reply Aff. at paras. 182-89. We agree with BellSouth that the difference of 1% to 2% between retail and wholesale performance was more a function of variations in volume rather than variations in treatment. BellSouth Varner Reply Aff. at para. 183. However, should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

[638] *See, e.g.*, Alabama A.3.2.4.1 (Customer Trouble Report Rate, PBX/Dispatch) (0.94%); Alabama A.3.2.6.1 (Customer Trouble Report Rate, ISDN/Dispatch) (0.33%).

[639] *See* North Carolina/South Carolina B.3.2.4.1 (Customer Trouble Report Rate, Combo Other/Dispatch).

[640] In South Carolina, the average difference during the past four months was about 2%. *See* South Carolina B.3.2.4.1 (Customer Trouble Report Rate, PBX/Dispatch). In North Carolina, the average difference was about 1.5%. *See* North Carolina B.3.2.4.1 (Customer Trouble Report Rate, PBX/Dispatch). Furthermore, North Carolina's misses were in March and April. BellSouth met the parity standard in May and June so it appears that its performance is on an upward trend. *Id.*

[641] *See* Alabama Commission Comments at 166; Kentucky Commission Comments at 145; Mississippi Commission Comments at 11-12; North Carolina Commission Comments at 145; South Carolina Commission Comments at 1-3.

[642] BellSouth provides timely, accurate, and complete usage data. *See* Alabama/Kentucky/Mississippi/South Carolina/North Carolina F.9.2 (DUF Delivery Timeliness); Alabama/Kentucky/Mississippi/South Carolina/North Carolina F.9.1 (DUF Delivery Accuracy); Alabama/Kentucky/Mississippi/South Carolina/North Carolina F.9.3 (DUF Delivery Completeness); Alabama/Kentucky/Mississippi/South Carolina/North Carolina F.9.4 (Mean Time to Deliver Usage).

[643] BellSouth generally provides accurate and complete carrier bills. *See* Alabama/Kentucky/Mississippi/South Carolina/North Carolina A.4.1 (Invoice Accuracy – Resale); Alabama/Kentucky/Mississippi/North Carolina/South Carolina B.4.1 (Invoice Accuracy – UNE). BellSouth also has generally met the parity standard for timely delivery of bills. *See* Alabama/Kentucky/Mississippi/South Carolina/North Carolina A.4.2 (Mean Time to Deliver Resale Invoices – CRIS); Alabama/Kentucky/Mississippi/South Carolina/North Carolina B.4.2 (Mean Time to Deliver UNE Invoices – CRIS).

standard in a few months in Alabama and Mississippi.[644] However, BellSouth still achieved at least a 98 percent accuracy rate overall.[645] As a result, competitive LECs were not harmed by BellSouth's failure to meet the parity standard for each of those metrics every month. In addition, BellSouth's missing the parity standard for three of the past four months for UNE bill timeliness lacks competitive significance because those misses are primarily the result of a transition to a new, enhanced billing system.[646] Furthermore, the difference between retail and wholesale performance was approximately a day,[647] and BellSouth has demonstrated an upward trend in its performance.[648] Finally, although BellSouth has not consistently met the standards for charge completeness,[649] it has averaged more than 90 percent – the benchmark – during the March to June period for both UNE and interconnection recurring and non-recurring charge completeness, with only one exception.[650]

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[644] During March through June 2002, BellSouth failed to meet the parity standard for resale invoice accuracy in Alabama for three months and Mississippi and South Carolina each for one month. *See* Alabama/Mississippi/South Carolina A.4.1 (Invoice Accuracy – Resale). BellSouth also failed to meet the parity standard for UNE invoice accuracy for two months for both Alabama and Mississippi during the relevant period. *See* Alabama/Mississippi B.4.1 (Invoice Accuracy – UNE).

[645] However, BellSouth still averaged nearly 99% resale invoice accuracy for competitive LECs in Mississippi and South Carolina. *See* Mississippi/South Carolina A.4.1 (Invoice Accuracy – Resale). BellSouth averaged more than 98% UNE invoice accuracy for competitive LECs in Mississippi and more than 99% for competitive LECs in Alabama – a higher average performance in Alabama during the past four months for BellSouth wholesale than for BellSouth retail. *See* Alabama/Mississippi B.4.1 (Invoice Accuracy – UNE).

[646] Performance data show that BellSouth has not consistently met the parity standard for metric Alabama/Kentucky/Mississippi/South Carolina/North Carolina B.4.2. (Mean Time to Deliver UNE Invoices – CRIS). From March to June 2002, BellSouth missed the parity standard three times. BellSouth explains that these delays were associated with the initial implementation of a new enhanced billing system, Integrated Billing System ("IBS"), and that those issues have been resolved. BellSouth Varner Reply Aff. at para. 236; BellSouth Scollard Aff. at paras. 8-10.

[647] The gap in performance during the four-month period was only about a day, which is not a substantial period of time for this metric (an average of 4.85 days for competitive LECs and 3.71 days for BellSouth from March to June).

[648] BellSouth's performance has demonstrated an upward trend from March, when BellSouth delivered invoices in a mean time of 7.29 days, to June, when BellSouth met the parity standard and delivered invoices in a mean time of 3.46 days. *See* Alabama/Kentucky/Mississippi/South Carolina/North Carolina B.4.2 (Mean Time to Deliver UNE Invoices – CRIS).

[649] *See generally* Alabama/Kentucky/Mississippi/North Carolina/South Carolina F.9.5 (Recurring Charge Completeness); Alabama/Kentucky/Mississippi/South Carolina/North Carolina F.9.6 (Non-Recurring Charge Completeness).

[650] *Id.* The exception is South Carolina. However, March and April performance in South Carolina were both abnormally low. These two months are at least partially explained by the extremely low volumes for interconnection orders, and BellSouth met the standard for May and June. In addition, BellSouth has implemented or is in the process of implementing new procedures to eliminate or correct these errors. *See* BellSouth Varner Aff. Exh. PM-6 at 30-32.

175. Moreover, our findings that competing carriers have a meaningful opportunity to compete are supplemented by the results of the KPMG third-party audit in Georgia, which found BellSouth's billing systems to be accurate and reliable.[651] However, we note that, should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action.

176. We reject competitive LECs' contentions that BellSouth fails to provide nondiscriminatory access to its billing functions. AT&T and NewSouth assert that the bills that they have received from BellSouth contain numerous errors.[652] In response, BellSouth states that AT&T has disputed only about 1.5 percent of AT&T's total CABS bills,[653] and that BellSouth's billing to NewSouth has been accurate more than 95 percent of the time.[654] AT&T also claims that BellSouth fails to respond to AT&T's complaints about alleged errors in billing in a timely fashion.[655] BellSouth notes that the parties' interconnection agreement provides a 60-day period for BellSouth to respond.[656] In addition, BellSouth and AT&T meet monthly to discuss billing disputes and other issues.[657] Given the small percentage of disputed bills and the overall accuracy of BellSouth's billing, we find that AT&T's and NewSouth's allegations do not indicate a systemic failure of BellSouth systems or processes; instead, they are indicative of the type of disputes over bills that arise in the normal course of business. Furthermore, there is no evidence demonstrating that BellSouth acts in a discriminatory manner or denies competitors a meaningful opportunity to compete. To the extent that billing disputes arise, carriers are able to address their disputes through the billing dispute resolution process outlined in their interconnection agreements[658] – and the record indicates that they are actively doing so.[659]

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[651] *See* KPMG Georgia MTP Final Report at III-C-1 through III-C-12 (Summary of Tests BLG1 through BLG5) and at VI-A through VI-F (Billing Results and Analysis); *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9114-15, para. 174. For a discussion of our reliance upon the Georgia third-party test, *see* section IV.B.2.a, *supra*.

[652] AT&T Bradbury/Norris Decl. at para. 109; Letter from John J. Heitmann, Counsel to NewSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-150 at 7 (filed Aug. 5, 2002) (NewSouth August 5 *Ex Parte* Letter). AT&T claims that many of the problems arising six or more months ago remain unresolved. *Id.* at para. 110. For example, AT&T claims that BellSouth has billed AT&T several hundred thousand dollars for originating switching charges even when the traffic originates on AT&T's switch; billed AT&T monthly for one-time charges associated with collocations; failed to bill AT&T for local minutes of use for a six-month period; sent AT&T bills on new accounts that erroneously list past due balances; and sent retail, instead of wholesale, bills to AT&T. AT&T Bradbury/Norris Decl. at para. 109. NewSouth has disputed $8.2 million in charges assessed by BellSouth during the past two years. Of the $8.2 million disputed, $5 million worth of disputes have been resolved, with 66% resolved in NewSouth's favor. NewSouth August 5 *Ex Parte* Letter

[653] BellSouth Scollard Reply Aff. at para. 3. The Carrier Access Billing System, or CABS, is used by BellSouth to bill for most UNE and interconnection services. BellSouth Scollard Aff. at para. 7.

[654] BellSouth August 15 Non-pricing *Ex Parte* Letter at 5.

[655] AT&T Bradbury/Norris Decl. at para. 110.

[656] BellSouth Scollard Reply Aff. at para. 13.

[657] *Id.*

[658] *Id.* at para. 4.

177. NewSouth also states that BellSouth does not remove disputed amounts from amounts it considers to be past due.[660] As a result, NewSouth claims that it appears that NewSouth takes longer to pay bills than it actually does, resulting in BellSouth's requests for further competitive LEC deposits.[661] BellSouth replies that its deposit requests are justified and allowed under its interconnection agreement with NewSouth.[662] Because we believe such individualized disputes are best addressed in proceedings outside of the section 271 requirements,[663] we do not find that NewSouth's claims warrant a finding of checklist noncompliance.

g. Change Management and Technical Assistance

178. We conclude that BellSouth demonstrates that it meets the requirements of checklist item two with regard to change management and technical assistance to competing carriers. The record in this proceeding shows that BellSouth's change management process, and its performance under this process, are comparable to or better than what we approved in the *BellSouth Georgia/Louisiana 271 Order* recently.[664] We find that, since the *BellSouth Georgia/Louisiana Order*, BellSouth has continued to improve the adequacy of its plan by broadening the scope of the CCP and by increasing the role of competitive LECs in the process. At the same time, we agree with the Department of Justice that many of the same problems with BellSouth's adherence to its change management process that we noted in the *BellSouth Georgia/Louisiana Order* still exist.[665] As noted by the Department of Justice, however, BellSouth has made progress in the past few months toward improving its implementation of

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659 *Id.* at para. 13.

660 NewSouth August 5 *Ex Parte* Letter at 7.

661 *Id.*

662 BellSouth August 15 Non-pricing *Ex Parte* Letter at 5.

663 For example, the Commission has suspended BellSouth's Transmittal No. 657 to its interstate access tariff, FCC No. 1, to review similar issues. *BellSouth Telecommunications, Inc. Tariff FCC No. 1,* Transmittal No. 657, Order, DA 02-1886 (Pricing Policy Div., Wireline Competition Bur., rel. Aug. 2, 2002).

664 BellSouth uses the same change management process region-wide. BellSouth Stacy Aff. at para. 41. Therefore, BellSouth's Change Control Process (CCP) we examine here is the same plan we approved in the *BellSouth Georgia/Louisiana Order*, with the exceptions noted herein. *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9118-9122, paras. 180-85.

665 Department of Justice Evaluation at 8. In the *BellSouth Georgia/Louisiana Order*, competitors raised various complaints alleging that BellSouth's change management process did not afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS. Competitive LECs claimed, among other things, that BellSouth failed to implement corrections to software defects in a timely manner and that there were unnecessary defects because BellSouth's software implementations were not sufficiently tested before release. *See BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9129, para. 195. Although commenters' allegations caused us concern, we nonetheless found that BellSouth adequately met the change management requirements of checklist item two. *Id.*

change requests.[666] Further, we recognize that change management is not an area that can be considerably improved overnight, and that time is required to demonstrate the results of process enhancements.

179. On that basis, we find here that BellSouth meets the change management requirements of checklist item two for Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. We recognize, however, that as a general matter, section 271 requirements are constantly evolving, so that what is sufficient for checklist compliance today may not be sufficient over time.[667] In light of the short period that has passed since the *BellSouth Georgia/Louisiana Order*, we find that the problems with BellSouth's change management process identified by commenters do not warrant a finding of checklist noncompliance. We note that, in this case, BellSouth has made a number of improvements and future commitments to its change management process and performance that fall outside the period of our review of these applications. As we make clear below, we do not rely on BellSouth improvements since filing this application or its future commitments for our decision here.[668] However, while we find BellSouth's performance to be adequate here, we believe it is essential for BellSouth to follow through on its commitment to improve its change management process and adherence. We note specifically, as we also did in the *BellSouth Georgia/Louisiana Order*, that it is essential that BellSouth continue to work collaboratively with competitive LECs through the CCP on prioritization issues, provide competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner.[669] Accordingly, we direct the Enforcement Bureau's Section 271 Compliance Team to monitor BellSouth's entire change management process, and specifically its performance under that process. If we discover problems with the change control process that undermine BellSouth's ongoing compliance with this checklist item, we will not hesitate to take action pursuant to section 271(d)(6).

(i) Change Management Process

180. In its prior orders, the Commission has explained that it must review a BOC's change management procedures to determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS.[670] In doing so, we first assess whether the plan is adequate by determining whether the evidence demonstrates that: (1) information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) competing carriers had

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666 Department of Justice Evaluation at 8.

667 *See AT&T v. FCC*, 220 F.3d 607, 625 (D.C. Cir. 2000).

668 *See, e.g.*, paras. 182, 187, 189, 191-92, 195-96, 199-202.

669 *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9128-30, paras. 193-95.

670 *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, paras. 102-03; *SWBT Texas Order*, 15 FCC Rcd at 18403-04, paras. 106-08.

substantial input in the design and continued operation of the change management process; (3) the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[671] After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.[672]

(a) Adequacy of the Change Management Plan

181. *Change Management Plan Organization.* Based on our examination of the record, we find, on balance, that BellSouth's CCP plan is adequate to provide competitive LECs access to BellSouth OSS.[673] BellSouth asserts that, since the filing of its Georgia/Louisiana application in February 2002, it has worked with competitive LECs to improve the change management process that was approved by the Commission in the *BellSouth Georgia/Louisiana Order*.[674] For example, prior to filing this application, BellSouth agreed to competitive LECs' requests to expand the definition of "CLEC-affecting" changes to BellSouth's systems, accepting the competitive LECs' proposed definition verbatim, so that the CCP will apply to a broader array of possible changes.[675] Furthermore, the Department of Justice and WorldCom acknowledge BellSouth's efforts to improve its change management plan.[676]

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[671] *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 108. As we have noted previously, we are open to consideration of change management plans that differ from those already found to be compliant with the requirements of section 271. *Bell Atlantic New York Order*, 15 FCC Rcd at 4004, para. 111; *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 109; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9117-18, para. 179.

[672] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 101, 4004-05, para. 112.

[673] BellSouth's Change Control Process is memorialized in a single document entitled, "Change Control Process." BellSouth Stacy Aff. at para. 85., Exh. WNS-13, Change Control Process, Version 3.1 (May 29, 2002) (CCP). The Change Control Process document and other related forms are available on BellSouth's website and are updated to reflect changes. BellSouth Stacy Aff. at paras. 85-86. This document sets forth the process and procedures that govern the communication and management of changes to electronic interfaces and related manual processes that affect external users of BellSouth's Electronic Interface Applications. *See generally* CCP at 16.

[674] BellSouth Stacy Aff. at para. 82. Among the recent improvements to the CCP are the inclusion of changes to the process only with the concurrence of the CCP participants or as directed by a state commission; the availability of appropriate BellSouth personnel to CCP participants; the expansion of the Monthly System Outage Report to include all outages; a longer notification period regarding the retirement of interface versions (from 120 to 180 days); and the expansion of the involvement of competitive LECs when BellSouth develops and introduces new interfaces. BellSouth Stacy Aff. at paras. 82, 161.

[675] BellSouth Stacy Aff. at para. 157; BellSouth Stacy Reply Aff. at para. 6. A "CLEC-affecting change" is any change that potentially may cause a [competitive] LEC to modify the way it operates in conducting wholesale business transactions with BellSouth. Modifications to the way [competitive] LECs operate in conducting wholesale business transactions with BellSouth include, but are not limited to: (1) changes to [competitive] LEC system code; (2) changes in [competitive] LEC employee training; (3) changes to [competitive] LEC business methods and procedures at the transaction, clarification, or escalation levels (4) changes to the work assignments of (continued....)